106TH CONGRESS
1st Session

SENATE

S. DOC.
106–4

PROCEEDINGS OF THE UNITED STATES SENATE

IN THE

IMPEACHMENT TRIAL OF PRESIDENT WILLIAM JEFFERSON CLINTON

VOLUME II: FLOOR TRIAL PROCEEDINGS

VOLUME II OF IV

FEBRUARY 12, 1999.—Ordered to be printed

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OFFICE OF THE SECRETARY OF THE SENATE

GARY SISCO, *Secretary*
SHARON A. ZELASKA, *Assistant Secretary*
RONALD KAVULICK and JERALD D. LINNELL, *Chief Reporters of Debates*
BRUCE E. KASOLD, *Chief Counsel*
KEITH SIMMONS, *Counsel*

UNANIMOUS CONSENT AGREEMENT

In the Senate of the United States

February 12, 1999

Mr. LOTT. I ask unanimous consent that the Secretary be authorized to include these statements [of Senators explaining their votes], along with the full record of the Senate's proceedings, the filings by the parties, and the supplemental materials admitted into evidence by the Senate, in a Senate document printed under the supervision of the Secretary of the Senate, that will complete the documentation of the Senate's handling of these impeachment proceedings.

The CHIEF JUSTICE. Without objection, it is so ordered.

To the memory of Raymond Scott Bates,
Legislative Clerk of the Senate,

who, until his untimely and tragic accidental death on February 5, 1999, in the midst of these proceedings, brought to the conduct of this trial the constant dedication, skill, and professionalism that characterized his Senate career. Scott represented the best of the Senate staff who work tirelessly to support the institution and its members.

FOREWORD

This document contains the full record of the United States Senate proceedings in the impeachment trial of President William Jefferson Clinton. Its purpose is to preserve for the future use of the Senate, the American people, and historians the formal record of the only Presidential impeachment trial of the 20th century. Together with the 24-volume Senate Document 106–3, which contains all publicly available materials submitted to or produced by the Judiciary Committee of the House of Representatives, these four volumes represent the entire official record of the impeachment actions against President Clinton.[1]

The present four volumes include the Senate proceedings in open session; filings by the parties; supplemental materials received in evidence that were not part of the House record, such as affidavits and depositions; floor statements of Senators in open session expressing their views regarding the proceedings; and statements delivered in closed deliberations that individual Senators elected to make public.

The document is divided into four sections—

Volume I: Preliminary Proceedings
Volume II: Floor Trial Proceedings
Volume III: Depositions and Affidavits
Volume IV: Statements of Senators Regarding the Impeachment Trial of President William Jefferson Clinton

VOLUME I: PRELIMINARY PROCEEDINGS

This volume contains the portion of the Senate proceedings that occurred before the actual trial commenced. On December 19, 1998, the House of Representatives adopted two articles of impeachment against President Clinton (House Resolution 611, 105th Congress) and a subsequent resolution appointing managers on the part of the House (House Resolution 614, 105th Congress).

Because the Senate of the 105th Congress had already completed its business and adjourned sine die, the House managers, in the late afternoon of December 19, 1998, delivered the articles of impeachment to the Secretary of the Senate. The Senate of the 106th Congress convened and organized on January 6, 1999, and the House notified the Senate that it had reappointed the managers (House Resolution 10, 106th Congress). On January 7, 1999, the House managers exhibited the articles of impeachment to the Senate and the Chief Justice of the United States, as presiding officer

[1] The Senate, by a unanimous-consent agreement of February 12, 1999, authorized the Secretary of the Senate to oversee the printing of the Senate proceedings in order to complete the documentation of the impeachment trial.

during the impeachment trial, took the prescribed oath, as did all Senators.

On January 8, 1999, the Senate unanimously directed that the summons be issued to President Clinton and that his answer to the articles be filed, together with the response of the House of Representatives (Senate Resolution 16, 106th Congress). This resolution admitted into evidence the materials submitted by the House Judiciary Committee and authorized their publication. It also allowed the parties to file preliminary motions (none was filed), established a schedule for the filing of trial briefs by the parties, and established further procedures for the conduct of the trial. Although all these documents were previously printed in Senate Document 106–2—as well as the text of the provisions of the United States Constitution applicable to impeachment and the Rules of Procedure and Practice of the Senate When Sitting in Impeachment Trials—they are reprinted here for ease of reference.

VOLUME II: FLOOR TRIAL PROCEEDINGS

This volume reproduces the full record of the Senate floor proceedings in the impeachment trial as provided under Senate Resolution 16. The resolution first permitted the parties an extended period to make their presentations. The managers presented their case on behalf of the House of Representatives on January 14, 15, and 16, 1999. Counsel for the President presented their case on January 19 and 20, 1999. The Senate then devoted January 22 and 23, 1999, to posing questions to the House managers and counsel.

Senate Resolution 16 also provided that, at the end of the question-and-answer period, the Senate would consider separately a motion to dismiss and a motion to subpoena witnesses and to present additional evidence not in the record. On January 25, 1999, the Senate heard argument on the motion to dismiss and, on January 26, 1999, considered the motion by the House managers to call witnesses and admit additional evidence. The Senate voted to deny the motion to dismiss and to grant the motion to subpoena witnesses.

On January 28, 1999, the Senate established procedures for the taking of depositions (Senate Resolution 30), and three witnesses were deposed on February 1, 2, and 3, 1999. On February 4, 1999, the Senate heard argument and voted on motions to admit the deposition testimony into evidence, to call witnesses to testify on the Senate floor, and to proceed directly to closing arguments. The portions of the deposition transcripts admitted into evidence are reproduced in this volume, while the full transcripts of the three depositions appear in Volume III. Both parties presented evidence to the Senate on February 6, 1999.

On February 8, 1999, the parties presented final arguments to the Senate. The Senate then considered proposals by various Senators to suspend the Senate impeachment rules to permit deliberation in open session, but all deliberations on motions and on the articles of impeachment occurred in closed session. (The proceedings in closed session are not published here, but statements that Senators elected to make public are printed in Volume IV.) Volume II concludes with the record of the February 12, 1999, vote

and judgment of the Senate to acquit President Clinton on both articles of impeachment.

VOLUME III: DEPOSITIONS AND AFFIDAVITS

This volume reproduces the complete transcripts of the depositions taken by the Senate of witnesses Monica S. Lewinsky, Vernon E. Jordan, Jr., and Sidney Blumenthal. It also contains the affidavits of Christopher Hitchens, Carol Blue, and R. Scott Armstrong, which were admitted into evidence by a unanimous-consent agreement of February 12, 1999.

VOLUME IV: STATEMENTS OF SENATORS REGARDING THE IMPEACHMENT TRIAL OF PRESIDENT WILLIAM JEFFERSON CLINTON

By unanimous consent, the Senate agreed to provide each Senator an opportunity to place in the Congressional Record a statement describing his or her own views on the impeachment. The statement could, if a Senator so chose, be a statement he or she had delivered during closed deliberations. Since not all Senators chose to publish their remarks, the fact that a statement of a particular Senator does not appear in Volume IV does not mean that the Senator did not address the Senate during its closed deliberations.

The publication of these four volumes, supplemented with Senate Document 106–3, contributes to a fuller understanding of the way in which the Senate conducted these important and historic proceedings.

GARY SISCO,
Secretary of the Senate.

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[1] On December 19, 1998, the House of Representatives agreed to H. Res. 611, 105th Cong., the Articles of Impeachment, [144 Cong. Rec. H12040–42 (daily ed. Dec. 19, 1998)] and H. Res.

614, 105th Cong., which provided for the appointment of managers and procedures relating to impeachment proceedings [id. at H12042–43].

[2] The House of Representatives agreed to H. Res. 10, 106th Cong., on January 6, 1999 [145 Cong. Rec. H216–17 (daily ed. Jan. 6, 1999)].

[3] The Appendix to Trial Memorandum of President William Jefferson Clinton, consisting of exhibits, was filed separately on January 20, 1999, but is inserted here for ease of reference.

[4] For ease of reference, the documents contained in S. Doc. 106–2, i.e., the pertinent constitutional provisions, the Senate Impeachment Rules, the Articles of Impeachment, the Answer of President Clinton, and the Replication of the House of Representatives, are reprinted in this publication. Separately, the Senate admitted into evidence and authorized the printing, pursuant to S. Res. 16, 106th Cong., of the publicly available materials submitted to or produced by the House Judiciary Committee, including transcripts of public hearings or mark-ups and any materials printed by the House of Representatives or the House Judiciary Committee pursuant to H. Res. 525 and H. Res. 581, 105th Cong. (1998). That evidentiary record, S. Doc. 106–3 (1999) [24 vols.], is not reproduced here.

[5] The unanimous-consent agreement of February 9, 1999, allowed each Senator to place in the Congressional Record his or her statement delivered during closed deliberations. Not all Senators chose to publish their remarks; the fact that a statement of a particular Senator does not appear here does not mean that Senator did not address the Senate during the closed sessions. Additionally, the unanimous-consent agreement of February 12, 1999, allowed Senators to have statements and opinions explaining their votes printed in the Congressional Record.

[6] Sen. Specter submitted an additional statement on February 12, see p. 2715 below.

[7] Sen. Feingold submitted an additional statement on February 22, see p. 3042 below.

[8] Sen. Bond submitted an additional statement on February 23, see p. 3058 below.

[9] Sen. Inhofe submitted an additional statement on February 12, see p. 2987 below.

[10] Sen. Leahy submitted additional statements on February 12 and February 23, see pp. 2996, 3090, 3102 below.

[11] Sen. Dodd submitted additional statements on February 23, see pp. 3099 and 3100 below.

[12] Sen. Reed submitted an additional statement on February 24, see p. 3103 below.

[13] Sen. Sessions submitted an additional statement on February 23, see p. 3094 below.

THURSDAY, JANUARY 14, 1999

[From the Congressional Record]

The Senate met at 1:04 p.m. and was called to order by the Chief Justice of the United States.

TRIAL OF WILLIAM JEFFERSON CLINTON, PRESIDENT OF THE UNITED STATES

The CHIEF JUSTICE. The Senate will convene as a Court of Impeachment. The Chaplain will offer a prayer.

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Almighty God, whose providential care has never varied all through our Nation's history, we ask You for a special measure of wisdom for the women and men of this Senate as they act as jurors in this impeachment trial. You have been our Nation's refuge and strength in triumphs and troubles, prosperity and problems. Now, dear Father, help us through this difficult time. As You guided the Senators to unity in matters of procedure, continue to make them one in their search for the truth and in their expression of justice. Keep them focused in a spirit of nonpartisan patriotism today and in the crucial days to come. Bless the distinguished Chief Justice as he presides over this trial. We commit to You all that is said and done and ultimately decided. In Your holy Name. Amen.

The CHIEF JUSTICE. The Sergeant at Arms will make the proclamation.

The Sergeant at Arms, James W. Ziglar, made proclamation as follows:

Hear ye! Hear ye! Hear ye! All persons are commanded to keep silent, on pain of imprisonment, while the Senate of the United States is sitting for the trial of the articles of impeachment exhibited by the House of Representatives against William Jefferson Clinton, President of the United States.

The CHIEF JUSTICE. The Presiding Officer recognizes the majority leader.

Mr. LOTT. Thank you, Mr. Chief Justice.

INSTALLING EQUIPMENT AND FURNITURE IN THE SENATE CHAMBER

Mr. LOTT. I send a resolution to the desk providing for installing equipment and furniture in the Senate Chamber and ask that it be agreed to and the motion to reconsider be laid upon the table.

The CHIEF JUSTICE. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 17), to authorize the installation of appropriate equipment and furniture in the Senate Chamber for the impeachment trial.

The CHIEF JUSTICE. Without objection, the resolution is considered and agreed to.

The resolution (S. Res. 17) was agreed to, as follows:

S. RES. 17

Resolved, That in recognition of the unique requirements raised by the impeachment trial of a President of the United States, the Sergeant at Arms shall install appropriate equipment and furniture in the Senate chamber for use by the managers from the House of Representatives and counsel to the President in their presentations to the Senate during all times that the Senate is sitting for trial with the Chief Justice of the United States presiding.

SEC. 2. The appropriate equipment and furniture referred to in the first section is as follows:

(1) A lectern, a witness table and chair if required, and tables and chairs to accommodate an equal number of managers from the House of Representatives and counsel for the President which shall be placed in the well of the Senate.

(2) Such equipment as may be required to permit the display of video, or audio evidence, including video monitors and microphones, which may be placed in the chamber for use by the managers from the House of Representatives or the counsel to the President.

SEC. 3. All equipment and furniture authorized by this resolution shall be placed in the chamber in a manner that provides the least practicable disruption to Senate proceedings.

PRIVILEGE OF THE FLOOR

Mr. LOTT. Mr. Chief Justice, I now ask unanimous consent that floor privileges be granted to the individuals listed on the document I send to the desk, during the closed impeachment proceedings of William Jefferson Clinton, President of the United States.

The CHIEF JUSTICE. Without objection, it is so ordered.

The document follows.

FLOOR PRIVILEGES DURING CLOSED SESSION

David Hoppe, Administrative Assistant, Majority Leader.
Michael Wallace, Counsel, Majority Leader.
Robert Wilkie, Counsel, Majority Leader.
Bill Corr, Counsel, Democratic Leader.
Robert Bauer, Counsel, Democratic Leader.
Andrea LaRue, Counsel, Democratic Leader.
Peter Arapis, Floor Manager, Democratic Whip.
Kirk Matthew, Chief of Staff, Assistant Majority Leader.
Stewart Verdery, Counsel, Assistant Majority Leader.
Tom Griffith, Senate Legal Counsel.
Morgan Frankel, Deputy Senate Legal Counsel.
Loretta Symms, Deputy Sergeant at Arms.
Bruce Kasold, Chief Counsel, Secretary & Sergeant at Arms.
David Schiappa, Assistant Majority Secretary.
Lula Davis, Assistant Minority Secretary.
Alan Frumin, Assistant Parliamentarian.
Kevin Kayes, Assistant Parliamentarian.
Patrick Keating, Assistant Journal Clerk.
Scott Sanborn, Assistant Journal Clerk.
David Tinsley, Assistant Legislative Clerk.
Ronald Kavulick, Chief Reporter.
Jerald Linnell, Official Reporter.
Raleigh Milton, Official Reporter.
Joel Breitner, Official Reporter.
Mary Jane McCarthy, Official Reporter.
Paul Nelson, Official Reporter.

Katie-Jane Teel, Official Reporter.
Patrick Renzi, Official Reporter.
Lee Brown, Staff Assistant, Official Reporter.
Kathleen Alvarez, Bill Clerk.
Simon Sargent, Staff Assistant to Sen. Cleland.

UNANIMOUS-CONSENT AGREEMENT—AUTHORITY TO PRINT SENATE DOCUMENTS

Mr. LOTT. Mr. Chief Justice, I ask unanimous consent that the Secretary of the Senate be authorized to print as a Senate document all documents filed by the parties together with other materials for the convenience of all Senators.

The CHIEF JUSTICE. Without objection, it is so ordered.

Mr. LOTT. Mr. Chief Justice, I am about to submit a series of unanimous-consent agreements and a resolution for the consideration of the Senate. In addition to these matters, I would like to state for the information of all Senators that, pursuant to S. Res. 16, the evidentiary record on which the parties' presentations over the next days will be based was filed by the House managers yesterday and was distributed to all Senators through their offices. These materials are now being printed at the Government Printing Office as Senate documents. The initial documents of the record have been printed and are now at each Senator's desk. As the printing of the rest of the volumes of the record is completed over the next few days, they will also be placed on the Senators' desks for their convenience.

THE JOURNAL

The CHIEF JUSTICE. Without objection, the Journal of the proceedings of the trial is approved to date.

The Presiding Officer submits to the Senate for printing in the Senate Journal the following documents:

The precept, issued on January 8, 1999;

The writ of summons, issued on January 8, 1999; and the receipt of summons, dated January 8, 1999.

The Presiding Officer submits to the Senate for printing in the Senate Journal the following documents, which were received by the Secretary of the Senate pursuant to Senate Resolution 16, 106th Congress, first session:

The answer of William Jefferson Clinton, President of the United States, to the articles of impeachment exhibited by the House of Representatives against him on January 7, 1999, received by the Secretary of the Senate on January 11, 1999;

The trial brief filed by the House of Representatives, received by the Secretary of the Senate on January 11, 1999;

The trial brief filed by the President, received by the Secretary of the Senate on January 13, 1999;

The replication of the House of Representatives, received by the Secretary of the Senate on January 13, 1999; and

The rebuttal brief filed by the House of Representatives, received by the Secretary of the Senate on January 14, 1999.

Without objection, the foregoing documents will be printed in the CONGRESSIONAL RECORD.

The documents follow:

THE UNITED STATES OF AMERICA, *ss:*

The Senate of the United States to James W. Ziglar, Sergeant at Arms, United States Senate, greeting:

You are hereby commanded to deliver to and leave with William Jefferson Clinton, if conveniently to be found, or if not, to leave at his usual place of abode, a true and attested copy of the within writ of summons, together with a like copy of this precept; and in whichsoever way you perform the service, let it be done at least 2 days before the answer day mentioned in the said writ of summons.

Fail not, and make return of this writ of summons and precept, with your proceedings thereon indorsed, on or before the day for answering mentioned in the said writ of summons.

Witness Strom Thurmond, President pro tempore of the Senate, at Washington, D.C., this 8th day of January, 1999, the two hundred and twenty-third year of the Independence of the United States.

Attest:

GARY SISCO,
Secretary of the Senate.

THE UNITED STATES OF AMERICA, *ss:*

The Senate of the United States to William Jefferson Clinton, greeting:

Whereas the House of Representatives of the United States of America did, on the 7th day of January, 1999, exhibit to the Senate articles of impeachment against you, the said William Jefferson Clinton, in the words following:

"Articles of impeachment exhibited by the House of Representatives of the United States of America in the name of itself and of the people of the United States of America, against William Jefferson Clinton, President of the United States of America, in maintenance and support of its impeachment against him for high crimes and misdemeanors.

ARTICLE I

"In his conduct while President of the United States, William Jefferson Clinton, in violation of his constitutional oath faithfully to execute the office of President of the United States and, to the best of his ability, preserve, protect, and defend the Constitution of the United States, and in violation of his constitutional duty to take care that the laws be faithfully executed, has willfully corrupted and manipulated the judicial process of the United States for his personal gain and exoneration, impeding the administration of justice, in that:

"On August 17, 1998, William Jefferson Clinton swore to tell the truth, the whole truth, and nothing but the truth before a Federal grand jury of the United States. Contrary to that oath, William Jefferson Clinton willfully provided perjurious, false and misleading testimony to the grand jury concerning one or more of the following: (1) the nature and details of his relationship with a subordinate Government employee; (2) prior perjurious, false and misleading testimony he gave in a Federal civil rights action brought against him; (3) prior false and misleading statements he allowed his attorney to make to a Federal judge in that civil rights action; and (4) his corrupt efforts to influence the testimony of witnesses and to impede the discovery of evidence in that civil rights action.

"In doing this, William Jefferson Clinton has undermined the integrity of his office, has brought disrepute on the Presidency, has betrayed his trust as President, and has acted in a manner subversive of the rule of law and justice, to the manifest injury of the people of the United States.

"Wherefore, William Jefferson Clinton, by such conduct, warrants impeachment and trial, and removal from office and disqualification to hold and enjoy any office of honor, trust, or profit under the United States.

ARTICLE II

"In his conduct while President of the United States, William Jefferson Clinton, in violation of his constitutional oath faithfully to execute the office of President of the United States and, to the best of his ability, preserve, protect, and defend the Constitution of the United States, and in violation of his constitutional duty to take care that the laws be faithfully executed, has prevented, obstructed, and impeded the administration of justice, and has to that end engaged personally, and through his subordinates and agents, in a course of conduct or scheme designed to delay, impede, cover up, and conceal the existence of evidence and testimony related to a

Federal civil rights action brought against him in a duly instituted judicial proceeding.

"The means used to implement this course of conduct or scheme included one or more of the following acts:

"(1) On or about December 17, 1997, William Jefferson Clinton corruptly encouraged a witness in a Federal civil rights action brought against him to execute a sworn affidavit in that proceeding that he knew to be perjurious, false and misleading.

"(2) On or about December 17, 1997, William Jefferson Clinton corruptly encouraged a witness in a Federal civil rights action brought against him to give perjurious, false and misleading testimony if and when called to testify personally in that proceeding.

"(3) On or about December 28, 1997, William Jefferson Clinton corruptly engaged in, encouraged, or supported a scheme to conceal evidence that had been subpoenaed in a Federal civil rights action brought against him.

"(4) Beginning on or about December 7, 1997, and continuing through and including January 14, 1998, William Jefferson Clinton intensified and succeeded in an effort to secure job assistance to a witness in a Federal civil rights action brought against him in order to corruptly prevent the truthful testimony of that witness in that proceeding at a time when the truthful testimony of that witness would have been harmful to him.

"(5) On January 17, 1998, at his deposition in a Federal civil rights action brought against him, William Jefferson Clinton corruptly allowed his attorney to make false and misleading statements to a Federal judge characterizing an affidavit, in order to prevent questioning deemed relevant by the judge. Such false and misleading statements were subsequently acknowledged by his attorney in a communication to that judge.

"(6) On or about January 18 and January 20–21, 1998, William Jefferson Clinton related a false and misleading account of events relevant to a Federal civil rights action brought against him to a potential witness in that proceeding, in order to corruptly influence the testimony of that witness.

"(7) On or about January 21, 23, and 26, 1998, William Jefferson Clinton made false and misleading statements to potential witnesses in a Federal grand jury proceeding in order to corruptly influence the testimony of those witnesses. The false and misleading statements made by William Jefferson Clinton were repeated by the witnesses to the grand jury, causing the grand jury to receive false and misleading information.

"In all of this, William Jefferson Clinton has undermined the integrity of his office, has brought disrepute on the Presidency, has betrayed his trust as President, and has acted in a manner subversive to the rule of law and justice, to the manifest injury of the people of the United States.

"Wherefore, William Jefferson Clinton, by such conduct, warrants impeachment and trial, and removal from office and disqualification to hold and enjoy any office of honor, trust, or profit under the United States."

And demand that you, the said William Jefferson Clinton, should be put to answer the accusations as set forth in said articles, and that such proceedings, examinations, trials, and judgments might be thereupon had as are agreeable to law and justice.

You, the said William Jefferson Clinton, are therefore hereby summoned to file with the Secretary of the United States Senate, S–220 The Capitol, Washington, D.C., 20510, an answer to the said articles of impeachment no later than noon on the 11th day of January, 1999, and therefore to abide by, obey, and perform such orders, directions, and judgments as the Senate of the United States shall make in the premises according to the Constitution and laws of the United States.

Hereof you are not to fail.

Witness Strom Thurmond, President pro tempore of the Senate, at Washington, D.C., this 8th day of January, 1999, the two hundred and twenty-third year of the Independence of the United States.

Attest:

GARY SISCO,
Secretary of the Senate.

The foregoing writ of summons, addressed to William Jefferson Clinton, President of the United States, and the foregoing precept, addressed to me, were duly served upon the said William Jefferson Clinton, by my delivering true and attested copies

of the same to Charles Ruff, at the White House, on the 8th day of January, 1999, at 5:27 p.m.

Attest:

JAMES W. ZIGLAR,
Sergeant at Arms.

LORETTA SYMMS,
Deputy Sergeant at Arms.

Dated: January 8, 1999.

Witnesseth:
Gary Sisco, *Secretary,*
United States Senate.

[In the Senate of the United States Sitting as a Court of Impeachment]

In re Impeachment of William Jefferson Clinton, President of the United States

ANSWER OF PRESIDENT WILLIAM JEFFERSON CLINTON TO THE ARTICLES OF IMPEACHMENT

The Honorable William Jefferson Clinton, President of the United States, in response to the summons of the Senate of the United States, answers the accusations made by the House of Representatives of the United States in the two Articles of Impeachment it has exhibited to the Senate as follows:

PREAMBLE

THE CHARGES IN THE ARTICLES DO NOT CONSTITUTE HIGH CRIMES OR MISDEMEANORS

The charges in the two Articles of Impeachment do not permit the conviction and removal from office of a duly elected President. The President has acknowledged conduct with Ms. Lewinsky that was improper. But Article II, Section 4 of the Constitution provides that the President shall be removed from office only upon "Impeachment for, and Conviction of, Treason, Bribery or other high Crimes and Misdemeanors." The charges in the articles do not rise to the level of "high Crimes and Misdemeanors" as contemplated by the Founding Fathers, and they do not satisfy the rigorous constitutional standard applied throughout our Nation's history. Accordingly, the Articles of Impeachment should be dismissed.

THE PRESIDENT DID NOT COMMIT PERJURY OR OBSTRUCT JUSTICE

The President denies each and every material allegation of the two Articles of Impeachment not specifically admitted in this answer.

ARTICLE I

President Clinton denies that he made perjurious, false and misleading statements before the federal grand jury on August 17, 1998.

FACTUAL RESPONSES TO ARTICLE I

Without waiving his affirmative defenses, President Clinton offers the following factual responses to the allegations in Article I:

(1) The President denies that he made perjurious, false and misleading statements to the grand jury about "the nature and details of his relationship" with Monica Lewinsky

There is a myth about President Clinton's testimony before the grand jury. The myth is that the President failed to admit his improper intimate relationship with Ms. Monica Lewinsky. The myth is perpetuated by Article I, which accuses the President of lying about "the nature and details of his relationship" with Ms. Lewinsky.

The fact is that the President specifically acknowledged to the grand jury that he had an improper intimate relationship with Ms. Lewinsky. He said so, plainly and clearly: "When I was alone with Ms. Lewinsky on certain occasions in early 1996 and once in early 1997, I engaged in conduct that was wrong. These encounters . . . did involve inappropriate intimate contact." The President described to the grand jury how the relationship began and how it ended at his insistence early in 1997—

long before any public attention or scrutiny. He also described to the grand jury how he had attempted to testify in the deposition in the *Jones* case months earlier without having to acknowledge to the *Jones* lawyers what he ultimately admitted to the grand jury—that he had an improper intimate relationship with Ms. Lewinsky.

The President read a prepared statement to the grand jury acknowledging his relationship with Ms. Lewinsky. The statement was offered at the beginning of his testimony to focus the questioning in a manner that would allow the Office of Independent Counsel to obtain necessary information without unduly dwelling on the salacious details of the relationship. The President's statement was followed by almost four hours of questioning. If it is charged that his statement was in any respect perjurious, false and misleading, the President denies it. The President also denies that the statement was in any way an attempt to thwart the investigation.

The President states, as he did during his grand jury testimony, that he engaged in improper physical contact with Ms. Lewinsky. The President was truthful when he testified before the grand jury that he did not engage in sexual relations with Ms. Lewinsky *as he understood that term to be defined by the Jones lawyers during their questioning of him in that deposition.* The President further denies that his other statements to the grand jury about the nature and details of his relationship with Ms. Lewinsky were perjurious, false, and misleading.

(2) The President denies that he made perjurious, false and misleading statements to the grand jury when he testified about statements he had made in the Jones deposition

There is a second myth about the President's testimony before the grand jury. The myth is that the President adopted his entire *Jones* deposition testimony in the grand jury. The President was not asked to and did not broadly restate or reaffirm his *Jones* deposition testimony. Instead, in the grand jury he discussed the bases for certain answers he gave. The President testified truthfully in the grand jury about statements he made in the *Jones* deposition. The President stated to the grand jury that he did not attempt to be helpful to or assist the lawyers in the *Jones* deposition in their quest for information about his relationship with Ms. Lewinsky. He truthfully explained to the grand jury his efforts to answer the questions in the *Jones* deposition without disclosing his relationship with Ms. Lewinsky. Accordingly, the full, underlying *Jones* deposition is not before the Senate.

Indeed, the House specifically considered and rejected an article of impeachment based on the President's deposition in the *Jones* case. The House managers should not be allowed to prosecute before the Senate an article of impeachment which the full House has rejected.

(3) The President denies that he made perjurious, false and misleading statements to the grand jury about "statements he allowed his attorney to make" during the Jones deposition

The President denies that he made perjurious, false and misleading statements to the grand jury about the statements his attorney made during the *Jones* deposition. The President was truthful when he explained to the grand jury his understanding of certain statements made by his lawyer, Robert Bennett, during the *Jones* deposition. The President also was truthful when he testified that he was not focusing on the prolonged and complicated exchange between the attorneys and Judge Wright.

(4) The President denies that he made perjurious, false and misleading statements to the grand jury concerning alleged efforts "to influence the testimony of witnesses and to impede the discovery of evidence" in the Jones case

For the reasons discussed more fully in response to Article II, the President denies that he attempted to influence the testimony of any witness or to impede the discovery of evidence in the *Jones* case. Thus, the President denies that he made perjurious, false and misleading statements before the grand jury when he testified about these matters.

FIRST AFFIRMATIVE DEFENSE: ARTICLE I DOES NOT MEET THE CONSTITUTIONAL STANDARD FOR CONVICTION AND REMOVAL

For the same reasons set forth in the preamble of this answer, Article I does not meet the rigorous constitutional standard for conviction and removal from office of a duly elected President and should be dismissed.

SECOND AFFIRMATIVE DEFENSE: ARTICLE I IS TOO VAGUE TO PERMIT CONVICTION AND REMOVAL

Article I is unconstitutionally vague. No reasonable person could know what specific charges are being leveled against the President. It alleges that the President provided the grand jury with "perjurious, false, and misleading testimony" concerning "one or more" of four subject areas. But it fails to identify *any* specific statement by the President that is alleged to be perjurious, false and misleading. The House has left the Senate and the President to guess at what it had in mind.

One of the fundamental principles of our law and the Constitution is that a person has a right to know what specific charges he or she is facing. Without such fair warning, no one can prepare the defense to which every person is entitled. The law and the Constitution also mandate adequate notice to jurors so they may know the basis for the vote they must make. Without a definite and specific identification of false statements, a trial becomes a moving target for the accused. In addition, the American people deserve to know upon what specific statements the President is being judged, given the gravity and effect of these proceedings, namely nullifying the results of a national election.

Article I sweeps broadly and fails to provide the required definite and specific identification. Were it an indictment, it would be dismissed. As an article of impeachment, it is constitutionally defective and should fail.

THIRD AFFIRMATIVE DEFENSE: ARTICLE I CHARGES MULTIPLE OFFENSE IN ONE ARTICLE

Article I is fatally flawed because it charges multiple instances of alleged perjurious, false and misleading statements in one article. The Constitution provides that "no person shall be convicted without the Concurrence of two thirds of the Members present," and Senate Rule XXIII provides that "an article of impeachment shall not be divisible for the purpose of voting thereon at any time during the trial." By the express terms of Article I, a Senator may vote for impeachment if he or she finds that there was perjurious, false and misleading testimony in "one or more" of four topic areas. This creates the very real possibility that conviction could occur even though Senators were in wide disagreement as to the alleged wrong committed. Put simply, the structure of Article I presents the possibility that the President could be convicted even though he would have been acquitted if separate votes were taken on each allegedly perjurious statement. For example, it would be possible for the President to be convicted and removed from office with as few as 17 Senators agreeing that any single statement was perjurious, because 17 votes for each of the four categories in Article I would yield 68 votes, one more than necessary to convict and remove.

By charging multiple wrongs in one article, the House of Representatives has made it impossible for the Senate to comply with the Constitutional mandate that any conviction be by the concurrence of two-thirds of the members. Accordingly, Article I should fail.

FACTUAL RESPONSES TO ARTICLE II

Without waiving his affirmative defenses, President Clinton offers the following factual responses to the allegations in Article II:

(1) The President denies that on or about December 17, 1997, he "corruptly encouraged" Monica Lewinsky "to execute a sworn affidavit in that proceeding that he knew to be perjurious, false and misleading"

The President denies that he encouraged Monica Lewinsky to execute a false affidavit in the *Jones* case. Ms. Lewinsky, the only witness cited in support of this allegation, denies this allegation as well. Her testimony and proffered statements are clear and unmistakable:

- "[N]o one even asked me to lie and I was never promised a job for my silence."
- "Neither the President nor anyone ever directed Lewinsky to say anything or to lie . . ."
- "Neither the Pres[ident] nor Mr. Jordan (or anyone on their behalf) asked or encouraged Ms. L[ewinsky] to lie."

The President states that, sometime in December 1997, Ms. Lewinsky asked him whether she might be able to avoid testifying the *Jones* case because she knew nothing about Ms. Jones or the case. The President further states that he told her he believed other witnesses had executed affidavits, and there was a chance they would not have to testify. The President denies that he ever asked, encouraged or suggested that Ms. Lewinsky file a false affidavit or lie. The President states that he

believed that Ms. Lewinsky could have filed a limited but truthful affidavit that might have enabled her to avoid having to testify in the *Jones* case.

(2) The President denies that on or about December 17, 1997, he "corruptly encouraged" Monica Lewinsky "to give perjurious, false and misleading testimony of and when called to testify personally" in the Jones litigation

Again, the President denies that he encouraged Ms. Lewinsky to lie if and when called to testify personally in the *Jones* case. The testimony and proffered statements of Monica Lewinsky, the only witness cited in support of this allegation, are clear and unmistakable:

• "[N]o one ever asked me to lie and I was never promised a job for my silence."

• "Neither the President nor anyone ever directed Lewinsky to say anything or to lie . . ."

• "Neither the Pres[ident] nor Mr. Jordan (or anyone on their behalf) asked or encouraged Ms. L[ewinsky] to lie."

The President states that, *prior* to Ms. Lewinsky's involvement in the *Jones* case, he and Ms. Lewinsky might have talked about what to do to conceal their relationship from others. Ms. Lewinsky was not a witness in any legal proceeding at that time. Ms. Lewinsky's own testimony and statements support the President's recollection. Ms. Lewinsky testified that she "pretty much can" exclude the possibility that she and the President ever had discussions about denying the relationship *after* she learned she was a witness in the *Jones* case. Ms. Lewinsky also stated that "they did not discuss the issue [of what to say about their relationship] is specific relation to the *Jones* matter," and that "she does not believe they discussed the content of any deposition that [she] might be involved in at a later date."

(3) The President denies that on or about December 28, 1997, he "corruptly engaged in, encouraged, or supported a scheme to conceal evidence" in the Jones case

The President denies that he engaged in, encouraged, or supported any scheme to conceal evidence from discovery in the *Jones* case, including any gifts he had given to Ms. Lewinsky. The President states that he gave numerous gifts to Ms. Lewinsky prior to December 28, 1997. The President states that, sometime in December, Ms. Lewinsky inquired as to what to do if she were asked in the *Jones* case about the gifts he had given her, to which the President responded that she would have to turn over whatever she had. The President states that he was unconcerned about having given her gifts and, in fact, that he gave Ms. Lewinsky additional gifts on December 28, 1997. The President denies that he ever asked his secretary, Ms. Betty Currie, to retrieve gifts he had given Ms. Lewinsky, or that he ever asked, encouraged, or suggested that Ms. Lewinsky conceal the gifts. Ms. Currie told prosecutors as early as January 1998 and repeatedly thereafter that it was Ms. Lewinsky who had contacted her about retrieving gifts.

(4) The President denies that he obstructed justice in connection with Monica Lewinsky's efforts to obtain a job in New York to "corruptly prevent" her "truthful testimony" in the Jones case

The President denies that he obstructed justice in connection with Ms. Lewinsky's job search in New York or sought to prevent her truthful testimony in the *Jones* case. The President states that he discussed with Ms. Lewinsky her desire to obtain a job in New York months before she was listed as a potential witness in the *Jones* case. Indeed, Ms. Lewinsky was offered a job in New York at the United Nations more than a month before she was identified as a possible witness. The President also states that he believes that Ms. Lewinsky raised with him, again before she was ever listed as a possible witness in the *Jones* case, the prospect of having Mr. Vernon Jordan assist in her job search. Ms. Lewinsky corroborates his recollection that it was her idea to ask for Mr. Jordan's help. The President also states that he was aware that Mr. Jordan was assisting Ms. Lewinsky to obtain employment in New York. The President denies that any of these efforts had any connection whatsoever to Ms. Lewinsky's status as a possible or actual witness in the *Jones* case. Ms. Lewinsky forcefully confirmed the President's denial when she testified, "I was never promised a job for my silence."

(5) The President denies that he "corruptly allowed his attorney to make false and misleading statements to a Federal judge" concerning Monica Lewinsky's affidavit

The President denies that he corruptly allowed his attorney to make false and misleading statements concerning Ms. Lewinsky's affidavit to a Federal judge during the *Jones* deposition. The President denies that he was focusing his attention on the prolonged and complicated exchange between his attorney and Judge Wright.

(6) The President denies that he obstructed justice by relating "false and misleading statements" to "a potential witness," Betty Currie, "in order to corruptly influence [her] testimony"

The President denies that he obstructed justice or endeavored in any way to influence any potential testimony of Ms. Betty Currie. The President states that he spoke with Ms. Currie on January 18, 1998. The President testified that, in that conversation, he was trying to find out what the facts were, what Ms. Currie's perception was, and whether his own recollection was correct about certain aspects of his relationship with Ms. Lewinsky. Ms. Currie testified that she felt no pressure "whatsoever" from the President's statements and no pressure "to agree with [her] boss." The President denies knowing or believing that Ms. Currie would be a witness in any proceeding at the time of this conversation. Ms. Currie had not been on any of the witness lists proffered by the *Jones* lawyers. President Clinton states that, after the Independent Counsel investigation became public, when Ms. Currie was scheduled to testify, he told Ms. Currie to "tell the truth."

(7) The President denies that he obstructed justice when he relayed allegedly "false and misleading statements" to his aides

The President denies that he obstructed justice when he misled his aides about the nature of his relationship with Ms. Lewinsky in the days immediately following the public revelation of the Lewinsky investigation. The President acknowledges that, in the days following the January 21, 1998, Washington Post article, he misled his family, his friends and staff, and the Nation to conceal the nature of his relationship with Ms. Lewinsky. He sought to avoid disclosing his personal wrongdoing to protect his family and himself from hurt and public embarrassment. The President profoundly regrets his actions, and he has apologized to his family, his friends and staff, and the Nation. The President denies that he had any corrupt purpose or any intent to influence the ongoing grand jury proceedings.

FIRST AFFIRMATIVE DEFENSE: ARTICLE II DOES NOT MEET THE CONSTITUTIONAL STANDARD FOR CONVICTION AND REMOVAL

For the reasons set forth in the preamble of this answer, Article II does not meet the constitutional standard for convicting and removing a duly elected President from office and should be dismissed.

SECOND AFFIRMATIVE DEFENSE: ARTICLE II IS TOO VAGUE TO PERMIT CONVICTION AND REMOVAL

Article II is unconstitutionally vague. No reasonable person could know what specific charges are being leveled against the President. Article II alleges that the President "obstructed and impeded the administration of justice" in both the *Jones* case and the grand jury investigation. But it provides little or no concrete information about the *specific acts* in which the President is alleged to have engaged, or with whom, or when, that allegedly obstructed or otherwise impeded the administration of justice.

As we set forth in the Second Affirmative Defense to Article I, one of the fundamental principles of our law and the Constitution is that a person has the right to know what specific charges he or she is facing. Without such fair warning, no one can mount the defense to which every person is entitled. Fundamental to due process is the right of the President to be adequately informed of the charges so that he is able to confront those charges and defend himself.

Article II sweeps too broadly and provides too little definite and specific identification. Were it an indictment, it would be dismissed. As an article of impeachment, it is constitutionally defective and should fail.

THIRD AFFIRMATIVE DEFENSE: ARTICLE II CHARGES MULTIPLE OFFENSES IN ONE ARTICLE

For the reasons set forth in the Third Affirmative Defense to Article I, Article II is constitutionally defective because it charges multiple instances of alleged acts of obstruction in one article, which makes it impossible for the Senate to comply with the Constitutional mandates that any conviction be by the concurrence of the two-thirds of the members. Accordingly, Article II should fail.

Respectfully submitted,

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Submitted: January 11, 1999.

[In the Senate of the United States Sitting as a Court of Impeachment]

In re Impeachment of President William Jefferson Clinton

TRIAL MEMORANDUM OF THE UNITED STATES HOUSE OF REPRESENTATIVES

Now comes the United States House of Representatives, by and through its duly authorized Managers, and respectfully submits to the United States Senate its Brief in connection with the Impeachment Trial of William Jefferson Clinton, President of the United States.

SUMMARY

The President is charged in two Articles with: (1) Perjury and false and misleading testimony and statements under oath before a federal grand jury (Article I), and (2) engaging in a course of conduct or scheme to delay and obstruct justice (Article II).

The evidence contained in the record, when viewed as a unified whole, overwhelmingly supports both charges.

PERJURY AND FALSE STATEMENTS UNDER OATH

President Clinton deliberately and willfully testified falsely under oath when he appeared before a federal grand jury on August 17, 1998. Although what follows is not exhaustive, some of the more overt examples will serve to illustrate.

- At the very outset, the President read a prepared statement, which itself contained totally false assertions and other clearly misleading information.
- The President relied on his statement nineteen times in his testimony when questioned about his relationship with Ms. Lewinsky.
- President Clinton falsely testified that he was not paying attention when his lawyer employed Ms. Lewinsky's false affidavit at the Jones deposition.
- He falsely claimed that his actions with Ms. Lewinsky did not fall within the definition of "sexual relations" that was given at his deposition.
- He falsely testified that he answered questions truthfully at his deposition concerning, among other subjects, whether he had been alone with Ms. Lewinsky.
- He falsely testified that he instructed Ms. Lewinsky to turn over the gifts if she were subpoenaed.
- He falsely denied trying to influence Ms. Currie after his deposition.
- He falsely testified that he was truthful to his aides when he gave accounts of his relationship, which accounts were subsequently disseminated to the media and the grand jury.

OBSTRUCTION OF JUSTICE

The President engaged in an ongoing scheme to obstruct both the Jones civil case and the grand jury. Further, he undertook a continuing and concerted plan to tamper with witnesses and prospective witnesses for the purpose of causing those witnesses to provide false and misleading testimony. Examples abound:

- The President and Ms. Lewinsky concocted a cover story to conceal their relationship, and the President suggested that she employ that story if subpoenaed in the Jones case.

• The President suggested that Ms. Lewinsky provide an affidavit to avoid testifying in the Jones case, when he knew that the affidavit would need to be false to accomplish its purpose.

• The President knowingly and willfully allowed his attorney to file Ms. Lewinsky's false affidavit and to use it for the purpose of obstructing justice in the Jones case.

• The President suggested to Ms. Lewinsky that she provide a false account of how she received her job at the Pentagon.

• The President attempted to influence the expected testimony of his secretary, Ms. Currie, by providing her with a false account of his meetings with Ms. Lewinsky.

• The President provided several of his top aides with elaborate lies about his relationship with Ms. Lewinsky, so that those aides would convey the false information to the public and to the grand jury. When he did this, he knew that those aides would likely be called to testify, while he was declining several invitations to testify. By this action, he obstructed and delayed the operation of the grand jury.

• The President conspired with Ms. Lewinsky and Ms. Currie to conceal evidence that he had been subpoenaed in the Jones case, and thereby delayed and obstructed justice.

• The President and his representatives orchestrated a campaign to discredit Ms. Lewinsky in order to affect adversely her credibility as a witness, and thereby attempted to obstruct justice both in the Jones case and the grand jury.

• The President lied repeatedly under oath in his disposition in the Jones case, and thereby obstructed justice in that case.

• The President's lies and misleading statements under oath at the grand jury were calculated to, and did obstruct, delay and prevent the due administration of justice by that body.

• The President employed the power of his office to procure a job for Ms. Lewinsky after she signed the false affidavit by causing his friend to exert extraordinary efforts for that purpose.

The foregoing are merely accusations of an ongoing pattern of obstruction of justice, and witness tampering extending over a period of several months, and having the effect of seriously compromising the integrity of the entire judicial system.

The effect of the President's misconduct has been devastating in several respects.

(1) He violated repeatedly his oath to "preserve, protect and defend the Constitution of the United States."

(2) He ignored his constitutional duty as chief law enforcement officer to "take care that the laws be faithfully executed."

(3) He deliberately and unlawfully obstructed Paula Jones's rights as a citizen to due process and the equal protection of the laws, though he had sworn to protect those rights.

(4) By his pattern of lies under oath, misleading statements and deceit, he has seriously undermined the integrity and credibility of the Office of President and thereby the honor and integrity of the United States.

(5) His pattern of perjuries, obstruction of justice, and witness tampering has affected the truth seeking process which is the foundation of our legal system.

(6) By mounting an assault in the truth seeking process, he has attacked the entire Judicial Branch of government.

The Articles of Impeachment that the House has preferred state offenses that warrant, if proved, the conviction and removal from office of President William Jefferson Clinton. The Articles charge that the President has committed perjury before a federal grand jury and that he obstructed justice in a federal civil rights action. The Senate's own precedents establish beyond doubt that perjury warrants conviction and removal. During the 1980s, the Senate convicted and removed three federal judges for committing perjury. Obstruction of justice undermines the judicial system in the same fashion that perjury does, and it also warrants conviction and removal.

Under our Constitution, judges are impeached under the same standard as Presidents—treason, bribery, or other high crimes and misdemeanors. Thus, these judicial impeachments for perjury set the standard here. Finally, the Senate's own precedents further establish that the President's crimes need not arise directly out of his official duties. Two of the three judges removed in the 1980s were removed for perjury that had nothing to do with their official duties.

INTRODUCTION

This Brief is intended solely to advise the Senate generally of the evidence that the Managers intend to produce, if permitted, and of the applicable legal principles. It is not intended to discuss exhaustively all of the evidence, nor does it necessarily

include each and every witness and document that the Managers would produce in the course of the trial. This Brief, then, is merely an outline for the use of the Senate in reviewing and assessing the evidence as it is set forth at trial—it is not, and is not intended to be a substitute for a trial at which all of the relevant facts will be developed.

H. RES. 611, 105TH CONG. 2ND SESS. (1998)

The House Impeachment Resolution charges the President with high crimes and misdemeanors in two Articles. Article One alleges that President Clinton "willfully corrupted and manipulated the judicial process of the United States for his personal gain and exoneration, impeding the administration of justice" in that he willfully provided perjurious, false and misleading testimony to a federal grand jury on August 17, 1998. Article Two asserts that the President "has prevented, obstructed, and impeded the administration of justice and engaged in a course of conduct or scheme designed to delay, impede, cover up, and conceal the existence of evidence and testimony related to a federal civil rights action brought against him." Both Articles are now before the Senate of the United States for trial as provided by the Constitution of the United States.

The Office of President represents to the American people and to the world, the strength, the philosophy and most of all, the honor and integrity that makes us a great nation and an example for the world. Because all eyes are focused upon that high office, the character and credibility of any temporary occupant of the Oval Office is vital to the domestic and foreign welfare of the citizens. Consequently, serious breaches of integrity and duty of necessity adversely influence the reputation of the United States.

This case is not about sex or private conduct. It is about multiple obstructions of justice, perjury, false and misleading statements, and witness tampering—all committed or orchestrated by the President of the United States.

Before addressing the President's lies and obstruction, it is important to place the events in the proper context. If this were only about private sex we would not now be before the Senate. But the manner in which the Lewinsky relationship arose and continued is important because it is illustrative of the character of the President and the decisions he made.

BACKGROUND

Monica Lewinsky, a 22-year-old intern, (ML 8/6/98 GJ, p. 8; H.Doc. 105–311, p. 728) was working at the White House during the government shutdown in 1995. (ML 8/6/98 GJ, p. 10; H.Doc. 105–311, p. 730) Prior to their first intimate encounter, she had never even spoken with the President. Sometime on November 15, 1995, Ms. Lewinsky and President Clinton flirted with each other. (*Id.*) The President of the United States of America then invited this unknown young intern into a private area off the Oval Office where he kissed her. He then invited her back later and when she returned, the two engaged in the first of many acts of inappropriate contact. (ML 8/6/98 GJ, p. 12; H.Doc. 105–311, p. 732)

Thereafter, the two concocted a cover story. If Ms. Lewinsky were seen, she was bringing papers to the President. That story was totally false. (ML 8/6/98 GJ, p. 54; H.Doc. 105–311, p. 774; 8/26/98 Dep., p. 34; H.Doc. 105–311, p. 1314) The only papers she brought were personal messages having nothing to do with her duties or those of the President. (ML 8/6/98 GJ, pgs. 54–55; H.Doc. 105–311, pp. 774–775) After Ms. Lewinsky moved from the White House to the Pentagon, her frequent visits to the President were disguised as visits to Betty Currie. (*Id.*) Those cover stories are important, because they play a vital role in the later perjuries and obstructions.

ENCOUNTERS

Over the term of their relationship the following significant matters occurred:

1. Monica Lewinsky and the President were alone on at least twenty-one occasions;
2. They had at least eleven personal sexual encounters, excluding phone sex: Three in 1995, Five in 1996 and Three in 1997;
3. They had at least 55 telephone conversations, at least seventeen of which involved phone sex;
4. The President gave Ms. Lewinsky twenty presents; and,
5. Ms. Lewinsky gave the President forty presents (O.I.C. Referral, App., Tab E; H.Doc. 105–311, pgs. 104–111)

These are the essential facts which form the backdrop for all of the events that followed.

The sexual details of the President's encounters with Ms. Lewinsky, though relevant, need not be detailed either in this document or through witness testimony. It is necessary, though, briefly to outline that evidence, because it will demonstrate that the President repeatedly lied about that sexual relationship in his deposition, before the grand jury, and in his responses to the Judiciary Committee's questions. He has consistently maintained that Ms. Lewinsky merely performed acts on him, while he never touched her in a sexual manner. This characterization not only directly contradicts Ms. Lewinsky's testimony, but it also contradicts the sworn grand jury testimony of three of her friends and the statements by two professional counselors with whom she contemporaneously shared the details of her relationship. (O.I.C. Referral, H.Doc. 105–310, pgs. 138–140)

While his treatment of Ms. Lewinsky was offensive, it is much more offensive for the President to expect the Senate to believe that in 1995, 1996, and 1997, his intimate contact with Ms. Lewinsky was so limited that it did not fall within his narrow interpretation of a definition of "sexual relations". As later demonstrated, he did not even conceive his interpretation until 1998, while preparing for his grand jury appearance.

How To View the Evidence

We respectfully submit that the evidence and testimony must be viewed as a whole; it cannot be compartmentalized. It is essential to avoid considering each event in isolation, and then treating it separately. Events and words that may seem innocent or even exculpatory in a vacuum may well take on a sinister, or even criminal connotation when observed in the context of the whole plot. For example, everyone agrees that Monica Lewinsky testified "No one ever told me to lie; nobody ever promised me a job." (ML 8/20/98 GJ, p. 105; H.Doc. 105–311, p. 1161)

When considered alone this would seem exculpatory. However, in the context of the other evidence, another picture emerges. Of course no one said. "Now, Monica, you go in there and lie." They didn't have to. Ms. Lewinsky knew what was expected of her. Similarly, nobody *promised* her a job, but once she signed the false affidavit, she got one.

The Issue

The ultimate issue is whether the President's course of conduct is such as to affect adversely the Office of the President and also upon the administration of justice, and whether he has acted in a manner contrary to his trust as President and subversive to the Rule of Law and Constitutional government.

The Beginning

The events that form the basis of these charges actually began in late 1995. They reached a critical stage in the winter of 1997 and the first month of 1998. The event culminated when the President of the United States appeared before a federal grand jury, raised his right hand to God and swore to tell the truth, the whole truth, and nothing but the truth.

December 5–6, 1997

On Friday, December 5, 1997, Monica Lewinsky asked Betty Currie if the President could see her the next day, Saturday, but Ms. Currie said that the President was scheduled to meet with his lawyers all day. (ML 8/6/98 GJ, pgs. 107–108; H.Doc. 105–311, pgs. 827–828) Later that Friday, Ms. Lewinsky spoke briefly to the President at a Christmas party. (ML 7/31/98 Int., p. 1; H.Doc. 105–311, p. 1451; ML 8/6/98 GJ, p. 108; H.Doc. 105–311, p. 828)

The Witness List Is Received

That evening, Paula Jones's attorneys faxed a list of potential witnesses to the President's attorneys. (849–DC–00000128; 849–DC–00000121–37; Referral, H.Doc. 105–311, p. 88) The list included Monica Lewinsky. However, Ms. Lewinsky did not find out that her name was on the list until the President told her ten days later, on December 17. (ML 8/6/98 GJ, pgs. 121–123; H.Doc. 105–311, pgs. 841–843) That delay is significant.

Ms. Lewinsky's First Visit

After her conversation with Ms. Currie and seeing the President at the Christmas party, Ms. Lewinsky drafted a letter to the President terminating their relationship.

(ML–55–DC–0177); ML 7/31/98 Int., p. 2; H.Doc. 105–311, p. 1452) The next morning, Saturday, December 6, Ms. Lewinsky went to the White House to deliver the letter and some gifts for the President to Ms. Currie. (ML 8/6/98 GJ, pgs. 108–109; H.Doc. 105–311, pgs. 828–829) When she arrived at the White House, Ms. Lewinsky spoke to several Secret Service officers, and one of them told her that the President was not with his lawyers, as she thought, but rather, he was meeting with Eleanor Mondale. (ML 8/6/98 GJ, p. 111; H.Doc. 105–311, p. 831; Mondale 7/16/98 Int., p. 1; H.Doc. 105–316, pgs. 2907–2908; H.Doc. 105–311, p. 2654) Ms. Lewinsky called Ms. Currie from a pay phone, angrily exchanged words with her, and went home. (ML 8/6/98 GJ, pgs. 112–13; H.Doc. 105–311, pgs. 832–833; Currie 1/27/98 GJ, p. 27; H.Doc. 105–316, p. 553) After that phone call, Ms. Currie told the Secret Service watch commander that the President was so upset about the disclosure of his meeting with Ms. Mondale that he wanted somebody fired. (Purdie 7/23/98 GJ, pgs. 13, 18–19; H.Doc. 105–316, pgs. 3356–3357).

THE TELEPHONE CONVERSATIONS

At 12:05 p.m., records demonstrate that Ms. Currie paged Bruce Lindsey with the message: "Call Betty ASAP." (964–DC–00000862; H.Doc. 105–311, p. 2722) Around that same time, according to Ms. Lewinsky, while she was back at her apartment, Ms. Lewinsky and the President spoke by phone. The President was very angry; he told Ms. Lewinsky that no one had every treated him as poorly as she had. (ML 8/6/98 GJ, pgs. 113–14; H.Doc. 105–311, pgs. 833–834) The President acknowledged to the grand jury that he was upset about Ms. Lewinsky's behavior and considered it inappropriate. (WJC 8/17/98 GJ, p. 85; H.Doc. 105–311, p. 537). Nevertheless, in a sudden change of mood, he invited her to visit him at the White House that afternoon. (ML 8/6/98 GJ, p. 114; H.Doc. 105–311, p. 834)

MS. LEWINSKY'S SECOND VISIT

Monica Lewinsky arrived at the White House for the second time that day and was cleared to enter at 12:52 p.m. (WAVES: 827–DC–00000018) Although, in Ms. Lewinsky's words, the President was "very angry" with her during their recent telephone conversation, he was "sweet" and "very affectionate" during this visit. (ML 8/6/98 GJ, pgs. 113–15; H.Doc. 105–311, pgs. 833–835). He also told her that he would talk to Vernon Jordan about her job situation. (ML 8/6/98 GJ, pgs. 115–16; H.Doc. 105–311, pgs. 835–836)

THE DISCUSSIONS WITH THE SECRET SERVICE

The President also suddenly changed his attitude toward the Secret Service. Ms. Currie informed some officers that if they kept quiet about the Lewinsky incident, there would be no disciplinary action. (Williams 7/23/98 GJ, pgs. 25, 27–28; H.Doc. 105–316, p. 4539; Chinery 7/23/98 GJ, p. 22–23; H.Doc. 105–316, p. 456). According to the Secret Service watch commander, Captain Jeffrey Purdie, the President personally told him, "I hope you use your discretion" or "I hope I can count on your discretion." (Purdie 7/23/98 GJ, p. 32; H.Doc. 105–316, p. 3360; Purdie 7/17/98 GJ, p. 3; H.Doc. 105–316, p. 3353) Deputy Chief Charles O'Malley, Captain Purdie's supervisor, testified that he knew of no other time in his fourteen years of service at the White House where the President raised a performance issue with a member of the Secret Service uniformed division. (O'Malley 9/8/98 Dep., pgs. 40–41; H.Doc. 105–316, pgs. 3168–3171) After his conversation with the President, Captain Purdie told a number of officers that they should not discuss the Lewinsky incident. (Porter 8/13/98 GJ, p. 12; H.Doc. 105–316, p. 3343; Niedzwiecki 7/30/98 GJ, pgs. 30–31, H.Doc. 105–316, p. 3114)

When the President was before the grand jury and questioned about his statements to the Secret Service regarding this incident, the President testified, "I don't remember what I said and I don't remember to whom I said it." (WJC 8/17/98 GJ, p. 86; H.Doc. 105–311, p. 534) When confronted with Captain Purdie's testimony, the President testified, "I don't remember anything I said to him in that regard. I have no recollection of that whatever." (WJC 8/17/98 GJ, p. 91; H.Doc. 105–311, p. 543)

THE PRESIDENT'S KNOWLEDGE OF THE WITNESS LIST

President Clinton testified before the grand jury that he learned that Ms. Lewinsky was on the Jones witness list that evening, Saturday, December 6, during a meeting with his lawyers. (WJC 8/17/98 GJ, p. 83–84; H.Doc. 105–311, p. 535–536) He stood by this answer in response to Request Number 16 submitted by the

Judiciary Committee. (Exhibit 18). The meeting occurred around 5 p.m., after Ms. Lewinsky had left the White House. (WAVES: 1407–DC–00000005; Lindsey 3/12/98 GJ, pgs. 64–66; H.Doc. 105–316, pgs. 2418–19) According to Bruce Lindsey, at the meeting, Bob Bennett had a copy of the Jones witness list faxed to Mr. Bennett the previous night. (Lindsey 3/12/98 GJ, pgs. 65–67; H.Doc. 105–316, p. 2419) (Exhibit 15)

However, during his deposition, the President testified that he had heard about the witness list *before* he saw it. (WJC 1/17/98 Dep., p. 70) In other words, if the President testified truthfully in his deposition, then he knew about the witness list before the 5 p.m. meeting. It is valid to infer that hearing Ms. Lewinsky's name on a witness list prompted the President's sudden and otherwise unexplained change from "very angry" to "very affectionate" that Saturday afternoon. It is also reasonable to infer that it prompted him to give the unique instruction to a Secret Service watch commander to use "discretion" regarding Ms. Lewinsky's visit to the White House, which the watch commander interpreted as an instruction to refrain from discussing the incident. (Purdie 7/17/98 GJ, pgs. 20–21; H.Doc. 105–316, pgs. 3351–3352; Purdie 7/23/98 GJ, pgs. 32–33; H.Doc. 105–315, pgs. 3360–3361)

THE JOB SEARCH FOR MS. LEWINSKY

Monica Lewinsky had been looking for a good paying and high profile job in New York since the previous July. She was not having much success despite the President's promise to help. In early November, Betty Currie arranged a meeting with Vernon Jordan who was supposed to help. (BC 5/6/98 GJ, p. 176; H.Doc. 105–316, p. 592)

On November 5, Ms. Lewinsky met for twenty minutes with Mr. Jordan (ML 8/6/98 GJ, pg. 104; H.Doc. 105–311, p. 824) No action followed; no job interviews were arranged and there were no further contacts with Mr. Jordan. It was obvious that he made no effort to find a job for Ms. Lewinsky. Indeed, it was so unimportant to him that he "had no recollection of an early November meeting" (VJ 3/3/98 GJ, pg. 50; H.Doc. 105–316, p. 1799) and that finding a job for Ms. Lewinsky was not a priority (VJ 5/5/98 GJ, p. 76; H.Doc. 105–316, p. 1804) (Chart R) Nothing happened throughout the month of November, because Mr. Jordan was either gone or would not return Monica's calls. (ML 8/6/98 GJ, p. 105–106; H.Doc. 105–311, pgs. 825–826)

During the December 6 meeting with the President, she mentioned that she had not been able to get in touch with Mr. Jordan and that it did not seem he had done anything to help her. The President responded by stating, "Oh, I'll talk to him. I'll get on it," or something to that effect. (ML 8/6/98 GJ, pgs. 115–116; H.Doc. 105–311, p. 836) There was obviously still no urgency to help Ms. Lewinsky. Mr. Jordan met the President the next day, December 7, but the meeting was unrelated to Ms. Lewinsky. (VJ 5/5/98 GJ. pgs. 83, 116; H.Doc. 105–316, pgs. 1805, 1810)

THE DECEMBER 11, 1997 ACTIVITY

The first activity calculated to help Ms. Lewinsky actually procure employment took place on December 11. Mr. Jordan met with Ms. Lewinsky and gave her a list of contact names. The two also discussed the President. (ML 8/6/98 GJ, pgs. 119, 120; H.Doc. 105–311, pgs. 839–840) That meeting Mr. Jordan remembered. (VJ 3/5/98 GJ, p. 41; H.Doc. 105–316, p. 1798) Vernon Jordan immediately placed calls to two prospective employers. (VJ 3/3/98 GJ, pgs. 54, 62–63; H.Doc. 105–316, pgs. 1800–1802) Later in the afternoon, he even called the President to give him a report on his job search efforts. (VJ 3/3/98 GJ, pgs. 64–66; H.Doc. 105–316, p. 1802) Clearly, Mr. Jordan and the President were now *very* interested in helping Monica find a good job in New York. (VJ 5/5/98 GJ, p. 95; H.Doc. 105–316, p. 1807)

SIGNIFICANCE OF DECEMBER 11, 1997

This sudden interest was inspired by a court order entered on December 11, 1997. On that date, Judge Susan Webber Wright ordered that Paula Jones was entitled to information regarding any state or federal employee with whom the President had sexual relations, proposed sexual relations, or sought to have sexual relations.

The President knew that it would be politically and legally expedient to maintain an amicable relationship with Monica Lewinsky. And the President knew that that relationship would be fostered by finding Ms. Lewinsky a job. This was accomplished through enlisting the help of Vernon Jordan.

DECEMBER 17, 1997, MS. LEWINSKY LEARNS OF WITNESS LIST

On December 17, 1997, between 2:00 and 2:30 in the morning, Monica Lewinsky's phone rang unexpectedly. It was the President of the United States. The President said that he wanted to tell Ms. Lewinsky two things: one was that Betty Currie's brother had been killed in a car accident; secondly, the President said that he "had some more bad news," that he had seen the witness list for the Paula Jones case and her name was on it. (ML 8/6/98 GJ, p. 123; H.Doc. 105–311, p. 843) The President told Ms. Lewinsky that seeing her name on the list "broke his heart." He then told her that "if [she] were to be subpoenaed, [she] should contact Betty and let Betty know that [she] had received the subpoena." (*Id.*) Ms. Lewinsky asked what she should do if subpoenaed. The President responded: "Well, maybe you can sign an affidavit." (*Id.*) Both parties knew that the Affidavit would need to be false and misleading to accomplish the desired result.

THE PRESIDENT'S "SUGGESTION"

Then, the President had a very pointed suggestion for Monica Lewinsky, a suggestion that left little room for compromise. He did not specifically tell her to lie. What he did say is "you know, you can always say you were coming to see Betty or that you were bringing me letters." (ML 8/6/98 GJ, p. 123; H.Doc. 105–311, p. 843)

In order to understand the significance of this statement, it is necessary to recall the "cover stories" that the President and Ms. Lewinsky had previously structured in order to deceive those who protected and worked with the President.

Ms. Lewinsky said she would carry papers when she visited the President. When she saw him, she would say: "Oh, gee, 'here are your letters,' wink, wink, wink and he would answer, 'Okay that's good.'" (ML 8/6/98 GJ, p. 54; H.Doc. 105–311, p. 774) After Ms. Lewinsky left White House employment, she would return to the Oval Office under the guise of visiting Betty Currie, not the President. (ML 8/6/98 GJ, p. 55; H.Doc. 105–311, p. 775)

Moreover, Ms. Lewinsky promised the President that she would always deny the sexual relationship and always protect him. The President would respond "that's good" or similar language of encouragement. (ML 8/20/98 GJ, p. 22; H.Doc. 105–311, p. 1078)

So, when the President called Ms. Lewinsky at 2:00 a.m. on December 17 to tell her she was on the witness list, he made sure to remind her of those prior "cover stories." Ms. Lewinsky testified that when the President brought up the misleading stories, she understood that the two would continue their pre-existing pattern of deception.

THE PRESIDENT'S INTENTION

It became clear that the President had no intention of making his sexual relationship with Monica Lewinsky a public affair. And he would use lies, deceit, and deception to ensure that the truth would not be known.

It is interesting to note that when the grand jury asked the President whether he remembered calling Monica Lewinsky at 2:00 a.m., he responded: "No sir, I don't. But it would . . . it is quite possible that that happened. . . ." (WJC 8/17/98 GJ, p. 115; H.Doc. 105–311, p. 567)

And when he was asked whether he encouraged Monica Lewinsky to continue the cover stories of "coming to see Betty" or "bringing the letters," he answered: "I don't remember exactly what I told her that night." (WJC 8/17/98 GJ, p. 117; H.Doc. 105–311, p. 565)

Six days earlier, he had become aware that Paula Jones' lawyers were now able to inquire about other women. Ms. Lewinsky could file a false affidavit, but it might not work. It was absolutely essential that both parties told the same story. He knew that he would lie if asked about Ms. Lewinsky, and he wanted to make certain that she would lie also. That is why the President of the United States called a twenty-four year old woman at 2:00 in the morning.

THE EVIDENCE MOUNTS

But the President had an additional problem. It was not enough that he (and Ms. Lewinsky) simply deny the relationship. The evidence was beginning to accumulate. Because of the emerging evidence, the President found it necessary to reevaluate his defense. By this time, the evidence was establishing, through records and eyewitness accounts, that the President and Monica Lewinsky were spending a significant amount of time together in the Oval Office complex. It was no longer expedient simply to refer to Ms. Lewinsky as a "groupie", "stalker", "clutch", or "home wreck-

er" as the White House first attempted to do. The unassailable facts were forcing the President to acknowledge some type of relationship. But at this point, he still had the opportunity to establish a non-sexual explanation for their meetings, since his DNA had not yet been identified on Monica Lewinsky's blue dress.

NEED FOR THE COVER STORY

Therefore, the President needed Monica Lewinsky to go along with the cover story in order to provide an innocent, intimate-free explanation for their frequent meetings. And that innocent explanation came in the form of "document deliveries" and "friendly chats with Betty Currie."

Significantly, when the President was deposed on January 17, 1998, he used the exact same cover stories that had been utilized by Ms. Lewinsky. In doing so, he stayed consistent with any future Lewinsky testimony while still maintaining his defense in the Jones lawsuit.

In the President's deposition, he was asked whether he was ever alone with Monica Lewinsky. He responded: "I don't recall . . . She—it seems to me *she brought things to me* once or twice on the weekends. In that case, whatever time she would be in there, *drop it off,* exchange a few words and go, she was there." (WJC 1/17/98 Dep., p. 52–53)

Additionally, when questions were posed regarding Ms. Lewinsky's frequent visits to the Oval Office, the President did not hesitate to mention Betty Currie in his answers, for example:

And my recollection is that on a couple of occasions after [the pizza party meeting], she was there [in the oval office] but my secretary, Betty Currie, was there with her. (WJC 1/17/98 Dep., p. 58)

Q. When was the last time you spoke with Monica Lewinsky?

A. I'm trying to remember. Probably sometime before Christmas. She came by to see Betty sometime before Christmas. And she was there talking to her, and I stuck my head out, said hello to her. (WJC 1/17/98 Dep., p. 68)

DECEMBER 19, 1997, MS. LEWINSKY IS SUBPOENAED

On December 19, 1997, Ms. Lewinsky was subpoenaed to testify in a deposition scheduled for January 23, 1998 in the Jones case. (ML 8/6/98 GJ, p. 128; H.Doc. 105–311, p. 848) (Charts F and G) Extremely distraught, she immediately called the President's closest friend, Vernon Jordan. As noted Ms. Lewinsky testified that the President previously told her to call Betty Currie if she was subpoenaed. She called Mr. Jordan instead because Ms. Currie's brother recently died and she did not want to bother her. (ML 8/6/98 GJ, pgs. 128–129; H.Doc. 105–311, pgs. 848, 849)

VERNON JORDAN'S ROLE

Mr. Jordan invited Ms. Lewinsky to his office and she arrived shortly before 5 p.m., still extremely distraught. Around this time, Mr. Jordan called the President and told him Ms. Lewinsky had been subpoenaed. (VJ 5/5/98 GJ, p. 145; H.Doc. 105–316, p. 1815) (Exhibit 1) During the meeting with Ms. Lewinsky, which Mr. Jordan characterized as "disturbing" (VJ 3/3/98 GJ, p. 100; H.Doc. 105–316, p. 1716), she talked about her infatuation with the President. (VJ 3/3/98 GJ, p. 150; H.Doc. 105–316, p. 1724) Mr. Jordan decided that he would call a lawyer for her. (VJ 3/3/98 GJ, p. 161; H.Doc. 105–316, p. 1726)

MR. JORDAN INFORMS THE PRESIDENT

That evening, Mr. Jordan met with the President and relayed his conversation with Ms. Lewinsky. The details are extremely important because the President, in his deposition, did not recall that meeting. Mr. Jordan told the President again that Ms. Lewinsky had been subpoenaed, that he was concerned about her fascination with the President, and that Ms. Lewinsky had asked Mr. Jordan if he thought the President would leave the First Lady. He also asked the President if he had sexual relations with Ms. Lewinsky. (VJ 3/3/98 GJ, p. 169; H.Doc 105–3316, p. 1727) The President was asked at his deposition:

Q. Did anyone other than your attorneys ever tell you that Monica Lewinsky had been served with a subpoena in this case?

A. I don't think so.

Q. Did you ever talk with Monica Lewinsky about the possibility that she might be asked to testify in this case?

A. Bruce Lindsey, I think Bruce Lindsey told me that she was, I think maybe that's the first person told me she was. I want to be as accurate as I can.

(WJC 1/17/98 Dep., pgs. 68–69)

In the grand jury, the President first repeated his denial that Mr. Jordan told him Ms. Lewinsky had been subpoenaed. (WJC 8/17/98 GJ, p. 39; H.Doc. 105–311, p. 491) Then, when given more specific facts, he admitted that he "knows now" that he spoke with Mr. Jordan about the subpoena on the night of December 19, but his "memory is not clear. . . ." (WJC 8/17/98 GJ, pgs. 41–42; H.Doc. 105–311, p. 493–494) In an attempt to explain away his false deposition testimony, the President testified in the grand jury that he was trying to remember who told him first. (WJC 8/17/98 GJ, p. 41; H.Doc. 105–311, pgs. 492–493) But that was not the question. So his answer was false and misleading. When one considers the nature of the conversation between the President and Mr. Jordan, the suggestion that it would be forgotten defies common sense.

DECEMBER 28, 1997

December 28, 1997 is a crucial date, because the evidence shows that the President made false and misleading statements to the federal court, the federal grand jury and the Congress of the United States about the events on that date. (Chart J) It is also a date on which he obstructed justice.

THE PRESIDENT'S ACCOUNT

The President testified that it was "possible" that he invited Ms. Lewinsky to the White House for this visit. (WJC 8/17/98 GJ, p. 33; H.Doc. 105–311, p. 485) He admitted that he "probably" gave Ms. Lewinsky the most gifts he had ever given her on that date, (WJC 8/17/98 GJ, p. 35; H.Doc. 105–311, p. 487) and that he had given her gifts on other occasions. (WJC 8/6/98 GJ, p. 35) (Chart D) Among the many gifts the President gave Ms. Lewinsky on December 28 was a bear that he said was a symbol of strength. (ML 8/6/98 GJ, p. 176; H.Doc. 105–311, p. 896) Yet only two-and-a-half weeks later, the President forgot that he had given any gifts to Ms. Lewinsky.

As an attorney, the President knew that the law will not tolerate someone who says, "I don't recall" when that answer is unreasonable under the circumstances. He also knew that, under those circumstances, his answer in the deposition could not be believed. When asked in the grand jury why he was unable to remember, even though he had given Ms. Lewinsky so many gifts only two-and-a-half weeks before the deposition, the President put forth an obviously contrived explanation.

"I think what I meant there was I don't recall what they were, not that I don't recall whether I had given them."

(WJC 8/17/98 GJ, p. 51; H.Doc. 105–311, p. 503)

RESPONSE TO COMMITTEE REQUESTS

The President adopted that same answer in Response No. 42 to the House Judiciary Committee's Requests For Admission. (Exhibit 18) He was not asked in the deposition to identify the gifts. He was simply asked, "Have you ever" given gifts to Ms. Lewinsky. The law does not allow a witness to insert unstated premises or mental reservations into the question to make his answer technically true, if factually false. The essence of lying is in deception, not in words.

The President's answer was false. The evidence also proves that his explanation to the grand jury and to the Committee is also false. The President would have us believe that he was able to analyze questions as they were being asked, and pick up such things as verb tense in an attempt to make his statements at least literally true. But when he was asked a simple, straightforward question, he did not understand it. Neither his answer in the deposition nor his attempted explanation is reasonable or true.

TESTIMONY CONCERNING GIFTS

The President was asked in the deposition if Monica Lewinsky ever gave him gifts. He responded, "once or twice." (WJC 1/17/98 Dep., p. 77) This is also false testimony calculated to obstruct justice. He answered this question in his Response to the House Judiciary Committee by saying that he receives numerous gifts, and he did not focus on the precise number. (Exhibit 18) The law again does not support the President's position. An answer that baldly understates a numerical fact in response to a specific quantitative inquiry can be deemed technically true but actually

false. For example, a witness is testifying falsely if he says he went to the store five times when in fact he had gone fifty, even though technically he had also gone five times. So too, when the President answered once or twice in the face of evidence that Ms. Lewinsky was frequently bringing gifts, he was lying. (Chart C)

CONCEALMENT OF GIFTS

On December 28, one of the most blatant efforts to obstruct justice and conceal evidence occurred. Ms. Lewinsky testified that she discussed with the President the fact that she had been subpoenaed and that the subpoena called for her to produce gifts. She recalled telling the President that the subpoena requested a hat pin, and that caused her concern. (ML 8/6/98 GJ, pgs. 151–152; H.Doc. 105–311, pgs. 871–872) The President told her that it "bothered" him, too. (ML 8/20/98 GJ, p. 66; H.Doc. 105–311, p. 1122) Ms. Lewinsky then suggested that she take the gifts somewhere, or give them to someone, maybe to Betty. The President answered: "I don't know" or "Let me think about that." (ML 8/6/98 GJ, pgs. 152–153; H.Doc. 105–311, pgs. 872–873) (Chart L) Later that day, Ms. Lewinsky got a call from Ms. Currie, who said: "I understand you have something to give me" or "the President said you have something to give me." (ML 8/6/98 GJ, pgs. 154–155; H.Doc. 105–311, pgs. 874–875) Ms. Currie has a fuzzy memory about this incident, but says that "the best she can remember," Ms. Lewinsky called her. (Currie 5/6/98 GJ, p. 105; H.Doc. 105–316, p. 581)

THE CELL PHONE RECORD

There is key evidence that Ms. Currie's fuzzy recollection is wrong. Ms. Lewinsky said that she thought Ms. Currie called from her cell phone. (ML 8/6/98 GJ, pgs. 154–155) (Chart K, Exhibit 2) Ms. Currie's cell phone record corroborates Ms. Lewinsky and proves conclusively that Ms. Currie called Monica from her cell phone several hours after she had left the White House. Moreover, Ms. Currie herself later testified that Ms. Lewinsky's memory may be better than hers on this point. (BC 5/6/98 GJ, p. 126; H.Doc. 105–316, p. 584) The facts prove that the President directed Ms. Currie to pick up the gifts.

MS. CURRIE'S LATER ACTIONS

That conclusion is buttressed by Ms. Currie's actions. If Ms. Lewinsky had placed the call requesting a gift exchange, Ms. Currie would logically ask the reason for such a transfer. Ms. Lewinsky was giving her a box of gifts from the President yet she did not tell the President of this strange request. She simply took the gifts and placed them under her bed without asking a single question. (BC 1/27/98 GJ, pgs. 57–58; H.Doc. 105–316, p. 557; BC 5/6/98 GJ, pgs. 105–108, 114; H.Doc. 105–316, pgs. 581–582)

The President stated in his Response to questions No. 24 and 25 from the House Committee that he was not concerned about the gifts. (Exhibit 18) In fact, he said that he recalled telling Monica that if the Jones lawyers request gifts, she should turn them over. The President testified that he is "not sure" if he knew the subpoena asked for gifts. (WJC 8/17/98 GJ, pgs. 42–43; H.Doc. 105–311, pgs. 494–495) Would Monica Lewinsky and the President discuss turning over gifts to the Jones lawyers if Ms. Lewinsky had not told him that the subpoena asked for gifts? On the other hand, if he knew the subpoena requested gifts, why would he give Ms. Lewinsky more gifts on December 28? Ms. Lewinsky's testimony reveals the answer. She said that she never questioned "that we were ever going to do anything but keep this private" and that meant to take "whatever appropriate steps needed to be taken" to keep it quiet. (ML 8/6/98 GJ, pgs. 166; H.Doc. 105–311, p. 886) The only logical inference is that the gifts—including the bear symbolizing strength—were a tacit reminder to Ms. Lewinsky that they would deny the relationship—even in the face of a federal subpoena.

THE PRESIDENT'S DEPOSITION TESTIMONY

Furthermore, the President, at various times in his deposition, seriously misrepresented the nature of his meeting with Ms. Lewinsky on December 28 in order to obstruct the administration of justice. First, he was asked: "Did she tell you she had been served with a subpoena in this case?" The President answered flatly: "No. I don't know if she had been." (WJC 1/17/98 Dep., p. 68)

He was also asked if he "ever talked to Monica Lewinsky about the possibility of her testifying." "I'm not sure . . .," he said. he then added that he may have joked to her that the Jones lawyers might subpoena every woman he has ever spoken to,

and that "I don't think we ever had more of a conversation than that about it. . . ." (WJC 1/17/98 Dep., p. 70) Not only does Monica Lewinsky directly contradict this testimony, but the President also directly contradicted himself before the grand jury. Speaking of his December 28, 1997 meeting, he said that he "knew by then, of course, that she had gotten a subpoena" and that they had a "conversation about the possibility of her testifying." (WJC 8/17/98 Dep., pgs. 35–36) Remember, he had this conversation about her testimony only two-and-a-half weeks before his deposition. Again, his version is not reasonable.

JANUARY 5–9, 1998, MS. LEWINSKY SIGNS THE AFFIDAVIT AND GETS A JOB

The President knew that Monica Lewinsky was going to execute a false Affidavit. He was so certain of the content that when she asked if he wanted to see it, he told her no, *that he had seen fifteen of them.* (ML 8/2/98 Int., p. 3; H.Doc. 105–311, p. 1489) He got his information from discussions with Ms. Lewinsky and Vernon Jordan generally about the content of the Affidavit. Moreover, the President had suggested the Affidavit himself and he trusted Mr. Jordan to be certain the mission was accomplished.

ADDITIONAL PRESIDENTIAL ADVICE

In the afternoon of January 5, 1998, Ms. Lewinsky met with her lawyer, Mr. Carter, to discuss the Affidavit. (ML 8/6/98 GJ, p. 192; H.Doc. 105–311, p. 912) Her lawyer asked her some hard questions about how she got her job. (ML 8/6/98 GJ, p. 195; H.Doc. 105–311, p. 915) After the meeting, she called Betty Currie and said that she wanted to speak to the President before she signed anything. (ML 8/6/98 GJ, p. 195; H.Doc. 105–311, p. 915) Ms. Lewinsky and the President discussed the issue of how she would answer under oath if asked about how she got her job at the Pentagon. (ML 8/6/98 GJ, p. 197; H.Doc. 105–311, p. 917) The President told her: "Well, you could always say that the people in Legislative Affairs got it for you or helped you get it." (ML 8/6/98 GJ, p. 197; H.Doc. 105–311, p. 917) That, too, is false and misleading.

VERNON JORDAN'S NEW ROLE

The President was also kept advised as to the contents of the Affidavit by Vernon Jordan. (VJ 5/5/98 GJ, p. 224; H.Doc. 105–316, p. 1828) On January 6, 1998, Ms. Lewinsky picked up a draft of the Affidavit from Mr. Carter's office. (ML 8/6/98 GJ, p. 199; H.Doc. 105–311, p. 919) She delivered a copy to Mr. Jordan's office. (ML 8/6/98 GJ, p. 200; H.Doc. 105–311, p. 920) because she wanted Mr. Jordan to look at the Affidavit in the belief that if Vernon Jordan gave his imprimatur, the President would also approve. (ML 8/6/98 GJ, pgs. 194–195; H.Doc. 105–311, pgs. 914, 915) (Chart M) Ms. Lewinsky and Mr. Jordan conferred about the contents and agreed to delete a paragraph inserted by Mr. Carter which might open a line of questions concerning whether she had been alone with the President. (ML 8/6/98 GJ, p. 200; H.Doc. 105–311, p. 920) (Exhibit 3) Mr. Jordan maintained that he had nothing to do with the details of the Affidavit. (VJ 3/5/98 GJ, p. 12; H.Doc. 105–316, p. 1735) He admits, though, that he spoke with the President after conferring with Ms. Lewinsky about the changes made to her Affidavit. (VJ 5/5/98 GJ, p. 218; H.Doc. 105–316, p. 1827)

MS. LEWINSKY SIGNS THE FALSE AFFIDAVIT

The next day, January 7, Monica Lewinsky signed the false Affidavit. (ML 8/6/98 GJ, pgs. 204–205; H.Doc. 105–311, pgs. 924–925) (Chart N; Exhibit 12) She showed the executed copy to Mr. Jordan that same day. (VJ 5/5/98 GJ, p. 222; H.Doc. 105–316, p. 1828) (Exhibit 4) Mr. Jordan, in turn, notified the President that she signed an affidavit denying a sexual relationship. (VJ 3/5/98 GJ, p. 26; H.Doc. 105–316, p. 1739)

MS. LEWINSKY GETS THE JOB

On January 8, 1998, Mr. Jordan arranged an interview for Ms. Lewinsky with MacAndrews and Forbes in New York. (ML 8/6/98 GJ, p. 206; H.Doc. 105–311, p. 926) The interview went poorly, so Ms. Lewinsky called Mr. Jordan and informed him. (ML 8/6/98 GJ, p. 206; H.Doc. 105–311, p. 926) Mr. Jordan, who had done nothing to assist Ms. Lewinsky's job search from early November to mid December, then called MacAndrews and Forbes CEO, Ron Perelman, to "make things happen, if they could happen." (VJ 5/5/98 GJ, p. 231; H.Doc. 105–316, p. 1829) Mr. Jordan called Ms. Lewinsky back and told her not to worry. (ML 8/6/98 GJ, pgs. 208–209;

H.Doc. 105–311, pgs. 928–929) That evening, Ms. Lewinsky was called by MacAndrews and Forbes and told that she would be given more interviews the next morning. (ML 8/6/98 GJ, p. 209; H.Doc. 105–311, p. 929)

After a series of interviews with MacAndrews and Forbes personnel, she was informally offered a job. (ML 8/6/98 GJ, p. 210; H.Doc. 105–311, p. 930) When Ms. Lewinsky called Mr. Jordan to tell him, he passed the good news on to Betty Currie stating, "Mission Accomplished." (VJ 5/28/98 GJ, p. 39; H.Doc. 105–316, p. 1898). Later, Mr. Jordan called the President and told him personally. (VJ 5/28/98 GJ, p. 41; H.Doc. 105–316, p. 1899) (Chart P)

THE REASON FOR MR. JORDAN'S UNIQUE BEHAVIOR

After Ms. Lewinsky had spent months looking for a job—since July according to the President's lawyers—Vernon Jordan made the critical call to a CEO the day after the false Affidavit was signed. Mr. Perelman testified that Mr. Jordan had never called him before about a job recommendation. (Perelman 4/23/98 Dep., p. 11; H.Doc. 105–316, p. 3281) Mr. Jordan, on the other hand, said that he called Mr. Perelman to recommend for hiring: (1) former Mayor Dinkins of New York; (2) a very talented attorney from Akin Gump; (3) a Harvard business school graduate; and (4) Monica Lewinsky. (VJ 3/5/98 GJ, p. 58–59; H.Doc. 105–316, p. 1747) Even if Mr. Perelman's testimony is mistaken, Ms. Lewinsky's qualifications do not compare to those of the individuals previously recommended by Mr. Jordan.

Vernon Jordan was well aware that people with whom Ms. Lewinsky worked at the White House did not like her (VJ 3/3/98 GJ, pgs. 43, 59) and that she did not like her Pentagon job. (VJ 3/3/98 GJ, pgs. 43–44; H.Doc. 105–316, pgs. 1706, 1707) Mr. Jordan was asked if at "any point during this process you wondered about her qualifications for employment?" He answered: "No, because that was not my judgment to make." (VJ 3/3/98 GJ, p. 44; H.Doc. 105–316, p. 1707) Yet, when he called Mr. Perelman the day after she signed the Affidavit, he referred to Ms. Lewinsky as a bright young girl who is "terrific." (Perelman 4/23/98 Dep., p. 10; H.Doc. 105–316, p. 3281) Mr. Jordan testified that she had been pressing him for a job and voicing unrealistic expectations concerning positions and salary. (VJ 3/5/98 GJ, pgs. 37–38; H.Doc. 105–316, p. 1742) Moreover, she narrated a disturbing story about the President leaving the First Lady, and how the President was not spending enough time with her. Yet, none of that gave Mr. Jordan pause in making the recommendation, especially after Monica was subpoenaed. (VJ 3/3/98 GJ, pgs. 156–157; H.Doc. 105–316, p. 1725)

THE IMPORTANCE OF THE FALSE AFFIDAVIT

Monica Lewinsky's false Affidavit enabled the President, through his attorneys, to assert at his January 17, 1998 deposition ". . . there is absolutely no sex of any kind in any manner, shape or form with President Clinton. . . ." (WJC, 1/17/98 Dep., p. 54) When questioned by his own attorney in the deposition, the President stated specifically that paragraph 8 of Ms. Lewinsky's Affidavit was "absolutely true." (WJC, 1/17/98 Dep., p. 204) The President later affirmed the truth of that statement when testifying before the grand jury. (WJC, 8/17/98 GJ, p. 20–21; H.Doc. 105–311, pg. 473) Paragraph 8 of Ms. Lewinsky's Affidavit states:

"I have never had a sexual relationship with the President, he did not propose that we have a sexual relationship, he did not offer me employment or other benefits in exchange for a sexual relationship, he did not deny me employment or other benefits for rejecting a sexual relationship."

Significantly, Ms. Lewinsky reviewed the draft Affidavit on January 6, and signed it on January 7 after deleting a reference to being alone with the President. She showed a copy of the signed Affidavit to Vernon Jordan, who called the President and told him that she had signed it. (VJ, 3/5/98 GJ, pgs. 24–26; H.Doc. 105–316, pgs. 1728, 1739; VJ, 5/5/98 GJ, p. 222; H.Doc. 105–316, p. 1828)

THE RUSH TO FILE THE AFFIDAVIT

For the affidavit to work for the President in precluding questions by the Jones attorneys concerning Ms. Lewinsky, it had to be filed with the Court and provided to the President's attorneys in time for his deposition on January 17. On January 14, the President's lawyers called Ms. Lewinsky's lawyer and left a message, presumably to find out if he had filed the Affidavit with the Court. (Carrier 6/18/98 GJ, p. 123; H.Doc. 105–316, p. 423) (Chart O) On January 15, the President's attorneys called her attorney twice. When they finally reached him, they requested a copy of the Affidavit and asked him, "Are we still on time?" (Carter 6/18/98 GJ, p.

123; H.Doc. 105–216, p. 423) Ms. Lewinsky's lawyer faxed a copy on the 15th. (Carter 6/18/98 GJ, p. 123, H.Doc. 105–316, p. 423) The President's counsel was aware of its contents and used it powerfully in the deposition.

Ms. Lewinsky's lawyer called the court in Arkansas twice on January 15 to ensure that the Affidavit could be filed on Saturday, January 17. (Carter 6/18/98 GJ, pgs. 124–125; H.Doc. 105–316, pgs. 423–424) (Exhibit 5) He finished the Motion to Quash Ms. Lewinsky's deposition in the early morning hours of January 16 and mailed it to the Court with the false Affidavit attached, for Saturday delivery. (Carter 6/18/98 GJ, p. 134; H.Doc. 105–316, p. 426) The President's lawyers left him another message on January 16, saying, "You'll know what it's about." (Carter 6/18/98 GJ, p. 135; H.Doc. 105–316, p. 426) Obviously, the President needed that Affidavit to be filed with the Court to support his plans to mislead Ms. Jones' attorneys in the deposition, and thereby obstruct justice.

THE NEWSWEEK INQUIRY

On January 15, Michael Isikoff of Newsweek called Betty Currie and asked her about Ms. Lewinsky sending gifts to her by courier. (BC 5/6/98 GJ, p. 123; H.Doc. 105–316, p. 584; ML 8/6/98 GJ, p. 228; H.Doc. 105–311, p. 948) Ms. Currie then called Ms. Lewinsky and told her about it. (ML 8/6/98 GJ, p. 228–229; H.Doc. 105–311, pgs. 948–949) The President was out of town, so later, Betty Currie called Ms. Lewinsky back, and asked for a ride to Mr. Jordan's office. (ML 8/6/98 GJ, p. 229; H.Doc. 105–311, p. 949; Currie 5/6/98 GJ, p. 130–131; H.Doc. 105–316, p. 585) Mr. Jordan advised her to speak with Bruce Lindsey and Mike McCurry. (VJ 3/5/98 GJ, p. 71) Ms. Currie testified that she spoke immediately to Mr. Lindsey about Isikoff's call. (BC 5/6/98 GJ, p. 127; H.Doc. 105–316, p. 584)

JANUARY 17, 1998, DEPOSITION AFTERMATH

By the time the President concluded his deposition on January 17, he knew that someone was talking about his relationship with Ms. Lewinsky. He also knew that the only person who had personal knowledge was Ms. Lewinsky herself. The cover stories that he and Ms. Lewinsky created, and that he used himself during the deposition, were now in jeopardy. It became imperative that he not only contact Ms. Lewinsky, but that he obtain corroboration of his account of the relationship from his trusted secretary, Ms. Currie. At around 7 p.m. on the night of the deposition, the President called Ms. Currie and asked that she come in the following day, Sunday. (BC 7/22/98 GJ, p. 154–155; H.Doc. 105–316, p. 701 (Exhibit 6) Ms. Currie could not recall the President ever before calling her that late at home on a Saturday night. (BC 1/27/98 GJ, p. 69; H.Doc. 105–316, p. 559) (Chart S) Sometime in the early morning hours of January 18, 1998, the President learned of a news report concerning Ms. Lewinsky released earlier that day. (WJC 8/17/98 GJ, p. 142–143; H.Doc. 105–311, pgs. 594–595) (Exhibit 14)

THE TAMPERING WITH THE WITNESS, BETTY CURRIE

As the charts indicate, between 11:49 a.m. and 2:55 p.m., there were three phone calls between Mr. Jordan and the President. (Exhibit 7) At about 5 p.m., Ms. Currie met with the President. (BC 1/27/98 GJ, p. 67; H.Doc. 105–316, p. 558) He told her that he had just been deposed and that the attorneys asked several questions about Monica Lewinsky. (BC 1/27/98 GJ, p. 69–70; H.Doc. 105–316, p. 559) He then made a series of statements to Ms. Currie: (Chart T)

(1) I was never really alone with Monica, right?
(2) You were always there when Monica was there, right?
(3) Monica came on to me, and I never touched her, right?
(4) You could see and hear everything, right?
(5) She wanted to have sex with me, and I cannot do that.

(BC 1/27/98 GJ, pgs. 70–75; H.Doc. 105–316, pgs. 559–560; BC 7/22/98 GJ, pgs. 6–7; H.Doc. 105–316, p. 664)

During Betty Currie's grand jury testimony, she was asked whether she believed that the President wished her to agree with the statements:

Q. Would it be fair to say, then—based on the way he stated [these five points] and the demeanor that he was using at the time that he stated it to you—that he wished you to agree with that statement?

A. I can't speak for him, but——

Q. How did you take it? Because you told us at these [previous] meetings in the last several days that that is how you took it.

A. [Nodding.]
Q. And you're nodding you head, "yes," is that correct?
A. That's correct.
Q. Okay, with regard to the statement that the President made to you, "You remember I was never really alone with Monica, right?" Was that also a statement that, as far as you took, that he wished you to agree with that?
A. Correct.

(BC 1/27/98 GJ, p. 74; H.Doc. 105–316, 559)

Though Ms. Currie would later intimate that she did not necessarily feel pressured by the President, she did state that she felt the President was seeking her agreement (or disagreement) with those statements. (BC 7/22/98 GJ, p. 27; H.Doc. 105–316, p. 669)

WAS THIS OBSTRUCTION OF JUSTICE?

The President essentially admitted to making these statements when he knew they were not true. Consequently, he had painted himself into a legal corner. Understanding the seriousness of the President "coaching" Ms. Currie, the argument has been made that those statements to her could not constitute obstruction because she had not been subpoenaed, and the President did not know that she was a potential witness at the time. This argument is refuted by both the law and the facts.

The United States Court of Appeals rejected this argument, and stated, "[A] person may be convicted of obstructing justice if he urges or persuades a prospective witness to give false testimony. Neither must the target be scheduled to testify at the time of the offense, nor must he or she actually give testimony at a later time." *United States* v. *Shannon*, 836 F.2d 1125, 1128 (8th Cir. 1988) (citing, e.g., *United States* v. *Friedland*, 660 F.2d 919, 931 (3rd Cir. 1981)).

Of course Ms. Currie was a prospective witness, and the President clearly wanted her to be deposed to corroborate him, as his testimony demonstrates. The President claims that he called Ms. Currie into work on a Sunday night only to find out what she knew. But the President knew the truth about his relationship with Ms. Lewinsky, and if he had told the truth during his deposition the day before, then he would have no reason to worry about what Ms. Currie knew. More importantly, the President's demeanor, Ms. Currie's reaction to his demeanor, and the blatant lies that he suggested clearly prove that the President was not merely interviewing Ms. Currie. Rather, he was looking for corroboration for his false cover-up, and that is why he coached her.

JANUARY 18, THE SEARCH FOR MS. LEWINSKY

Very soon after his Sunday meeting with Ms. Currie, at 5:12 p.m., the flurry of telephone calls in search of Monica Lewinsky began. (Chart S) Between 5:12 p.m. and 8:28 p.m., Ms. Currie paged Ms. Lewinsky four times. "Kay" is a reference to a code name Ms. Lewinsky and Ms. Currie agreed to when contacting one another. (ML 8/6/98 GJ, p. 216; H.Doc. 105–311, pg. 936) At 11:02 p.m., the President called Ms. Currie at home to ask if she had reached Lewinsky. (BC 7/22/98 GJ, p. 160; H.Doc. 105–316, p. 702)

JANUARY 19, THE SEARCH CONTINUES

The following morning, January 19, Ms. Currie continued to work diligently on behalf of the President. Between 7:02 a.m. and 8:41 a.m., she paged Ms. Lewinsky another five times. (Chart S) (Exhibit 8) After the 8:41 page, Ms. Currie called the President at 8:43 a.m. and said that she was unable to reach Ms. Lewinsky. (BC 7/22/98 GJ, pgs. 161–162; H.Doc. 105–316, p. 703) One minute later, at 8:44 a.m., she again paged Ms. Lewinsky. This time Ms. Currie's page stated "Family Emergency," apparently in an attempt to alarm Ms. Lewinsky into calling back. That may have been the President's idea, since Ms. Currie had just spoken with him. The President was obviously quite concerned because he called Betty Currie only six minutes later, at 8:50 a.m. Immediately thereafter, at 8:51 a.m., Ms. Currie tried a different tact, sending the message: "Good news." Again, perhaps at the President's suggestion. If bad news does not get her to call, try good news. Ms. Currie said that she was trying to encourage Ms. Lewinsky to call, but there was no sense of "urgency." (BC 7/22/98 GJ, p. 165; H.Doc. 105–316, p. 704) Ms. Currie's recollection of why she was calling was again fuzzy. She said at one point that she believes the President asked her to call Ms. Lewinsky, and she thought she was calling just to tell her that her name came up in the deposition. (BC 7/22/98 GJ, p. 162; H.Doc. 105–316, p. 703) Monica Lewinsky had been subpoenaed; of course her name came

up in the deposition. There was obviously another and more important reason the President needed to get in touch with her.

MR. JORDAN AND MS. LEWINSKY'S LAWYERS JOIN THE SEARCH

At 8:56 a.m., the President telephoned Vernon Jordan, who then joined in the activity. Over a course of twenty-four minutes, from 10:29 to 10:53 a.m., Mr. Jordan called the White House three times, paged Ms. Lewinsky, and called Ms. Lewinsky's attorney, Frank Carter. Between 10:53 a.m. and 4:54 p.m., there are continued calls between Mr. Jordan, Ms. Lewinsky's attorney and individuals at the White House.

MS. LEWINSKY REPLACES HER LAWYER

Later that afternoon, at 4:54 p.m., Mr. Jordan called Mr. Carter. Mr. Carter relayed that he had been told he no longer represented Ms. Lewinsky. (VJ 3/5/98 GJ, p. 141; H.Doc. 105–316, p. 1771) Mr. Jordan then made feverish attempts to reach the President or someone at the White House to tell them the bad news, as represented by the six calls between 4:58 p.m. and 5:22 p.m. Vernon Jordan said that he tried to relay this information to the White House because "[t]he President asked me to get Monica Lewinsky a job," and he thought it was "information that they ought to have." (VJ 6/9/98 GJ, pgs. 45–46; H.Doc. 105–316, p. 1968) (Chart Q) Mr. Jordan then called Mr. Carter back at 5:14 p.m. to go over what they had already talked about. (VJ 3/5/98 GJ, p. 146; H.Doc. 104–316, p. 1772) Mr. Jordan finally reached the President at 5:56 p.m. and told him that Mr. Carter had been fired. (VJ 6/9/98 GJ, p. 54; H.Doc. 105–316, p. 1970)

THE REASON FOR THE URGENT SEARCH

This activity shows how important it was for the President of the United States to find Monica Lewinsky to learn to whom she was talking. Betty Currie was in charge of contacting Ms. Lewinsky. The President had just completed a deposition in which he provided false and misleading testimony about his relationship with Ms. Lewinsky. She was a co-conspirator in hiding this relationship from the Jones attorneys, and he was losing control over her. The President never got complete control over her again.

ARTICLE I.—FALSE AND MISLEADING STATEMENTS TO THE GRAND JURY

Article I addresses the President's perjurious, false, and misleading testimony to the grand jury. Four categories of false grand jury testimony are listed in the Article. Some salient examples of false statements are described below. When judging the statements made and the answers given, it is vital to recall that the President spent literally days preparing his testimony with his lawyer. He and his attorney were fully aware that the testimony would center around his relationship with Ms. Lewinsky and his deposition testimony in the *Jones* case.

GRAND JURY TESTIMONY

On August 17, after six invitations, the President of the United States appeared before a grand jury of his fellow citizens and took an oath to tell the complete truth. The President proceeded to equivocate and engage in legalistic fencing; he also lied. The entire testimony was calculated to mislead and deceive the grand jury and to obstruct its process, and eventually to deceive the American people. He set the tone at the very beginning. In the grand jury a witness can tell the truth, lie or assert his privileges against self incrimination. (Chart Y) President Clinton was given a fourth choice. The President was permitted to read a statement. (Chart Z; WJC 8/17/98 GJ, pgs. 8–9)

THE PRESIDENT'S PREPARED STATEMENT

That statement itself is demonstrably false in many particulars. President Clinton claims that he engaged in inappropriate conduct with Ms. Lewinsky "on certain occasions in early 1996 and once in 1997." Notice he did not mention 1995. There was a reason. On three "occasions" in 1995, Ms. Lewinsky said she engaged in sexual contact with the President. Ms. Lewinsky was a twenty-one year old intern at the time.

The President unlawfully attempted to conceal his three visits alone with Ms. Lewinsky in 1995 during which they engaged in sexual conduct. (ML 8/6/98 GJ, pgs. 27–28; H.Doc. 105–311, pgs. 747–748; ML 8/6/98 GJ, Ex. 7; H.Doc. 105–311, p. 1251; Chart A) Under Judge Wright's ruling, this evidence was relevant and material to

Paula Jones' sexual harassment claims. (Order, Judge Susan Webber Wright, December 11, 1997, p. 3)

The President specifically and unequivocally states, "[The encounters] did not constitute sexual relations as I understood that term to be defined at my January 17, 1998 deposition." That assertion is patently false. It is directly contradicted by the corroborated testimony of Monica Lewinsky. (See eg: ML 8/20/98 GJ, pgs. 31–32; H.Doc. 311, p. 1174; ML 8/26/98 Dep., p. 25, 30; H.Doc. 311, pgs. 1357, 1358)

Evidence indicates that the President and Ms. Lewinsky engaged in "sexual relations" as the President understood the term to be defined at his deposition and as any reasonable person would have understood the term to have been defined.

Contrary to his statement under oath, the President's conduct during the 1995 visits and numerous additional visits did constitute "sexual relations" as he understood the term to be defined at his deposition. Before the grand jury, the President admitted that directly touching or kissing another person's breast, or directly touching another person's genitalia with the intent to arouse, would be "sexual relations" as the term was defined. (WJC 8/17/98 GJ, pgs. 94–95; H.Doc 105–311, pgs. 546–547) However, the President maintained that he did not engage in such conduct. (*Id.*) These statements are contradicted by Ms. Lewinsky's testimony and the testimony of numerous individuals with whom she contemporaneously shared the details of her encounters with the President. Moreover, the theory that Ms. Lewinsky repeated and unilaterally performed acts on the President while he tailored his conduct to fit a contorted definition of "sexual relations" which he had not contemplated at the time of the acts, defies common sense.

Moreover, the President had not even formed the contorted interpretation of "sexual relations" which he asserted in the grand jury until after his deposition had concluded. This is demonstrated by the substantial evidence revealing the President's state of mind during his deposition testimony. First, the President continuously denied at his deposition any fact that would cause the *Jones* lawyers to believe that he and Ms. Lewinsky had any type of improper relationship, including a denial that they had a sexual affair, (WJC 1/17/98 Dep., p. 78) not recalling if they were ever alone, (WJC 1/17/98 Dep., pgs. 52–53, 59) and not recalling whether Ms. Lewinsky had ever given him gifts. (WJC 1/17/98 Dep., pg. 75) Second, the President testified that Ms. Lewinsky's affidavit denying a sexual relationship was "absolutely true" when, even by his current reading of the definition, it is absolutely false. (WJC 1/17/98 Dep., p. 204) Third, the White House produced a document entitled "January 24, 1998 Talking Points," stating flatly that the President's definition of "sexual relations" included oral sex. (Chart W) Fourth, the President made statements to staff members soon after the deposition, saying that he did not have sexual relations, including oral sex, with Ms. Lewinsky, (Podesta 6/16/98 GJ, pg. 92; H.Doc. 105–316, p. 3311) and that she threatened to tell people she and the President had an affair when he rebuffed her sexual advances. (Blumenthal 6/4/98 GJ, p. 59; H.Doc. 105–316, p. 185) Fifth, President Clinton's Answer filed in Federal District Court in response to Paula Jones' First Amended Complaint states unequivocally that "President Clinton denies that he engaged in any improper conduct with respect to plaintiff or any other woman." (Answer of Defendant William Jefferson Clinton, December 17, 1997, p. 8, para. 39) Sixth, in President Clinton's sworn Answers to Interrogatories Numbers 10 and 11, as amended, he flatly denied that he had sexual relations with any federal employee. The President filed this Answer prior to his deposition. Finally, as described below, the President sat silently while his attorney, referring to Ms. Lewinsky's affidavit, represented to the court that there was no sex of any kind or in any manner between the President and Ms. Lewinsky. (WJC 1/17/98 Dep., pg. 54)

This circumstantial evidence reveals the President's state of mind at the time of the deposition: his concern was not in technically or legally accurate answers, but in categorically denying anything improper. His grand jury testimony about his state of mind during the deposition is false.

Reasons for the False Testimony

The President did not lie to the grand jury to protect himself from embarrassment, as he could no longer deny the affair. Before his grand jury testimony, the President's semen had been identified by laboratory tests on Ms. Lewinsky's dress, and during his testimony, he admitted an "inappropriate intimate relationship" with Ms. Lewinsky, In fact, when he testified before the grand jury, he was only hours away from admitting the affair on national television. Embarrassment was inevitable. But, if he truthfully admitted the details of his encounters with Ms. Lewinsky to the grand jury, he would be acknowledging that he lied under oath during his deposition when he claimed that he did not engage in sexual relations with Ms.

Lewinsky. (WJC 1/17/98 Dep., pgs. 78, 109, 204) Instead, he chose to lie, not to protect his family or the dignity of his office, but to protect himself from criminal liability for his perjury in the *Jones* case.

ADDITIONAL FALSITY IN THE PREPARED STATEMENT

The President's statement continued, "I regret that what began as a friendship came to include this conduct [.]" (WJC 8/17/98 GJ, p. 9; H.Doc. 105–311, p. 461) The truth is much more troubling. As Ms. Lewinsky testified, her relationship with the President began with flirting, including Ms. Lewinsky showing the President her underwear. (ML 7/30/98 Int., p. 5; H.Doc. 105–311, p. 1431) As Ms. Lewinsky candidly admitted, she was surprised that the President remembered her name after their first two sexual encounters. (ML 8/26/98 Dep., p. 25; H.Doc. 105–311, p. 1295)

REASON FOR THE FALSITY

The President's prepared statement, fraught with untruths, was not an answer the President delivered extemporaneously to a particular question. It was carefully drafted testimony which the President read and relied upon throughout his deposition. The President attempted to use the statement to foreclose questioning on an incriminating topic on nineteen separate occasions. Yet, this prepared testimony, which along with other testimony provides the basis for Article I, Item 1, actually contradicts his sworn deposition testimony.

CONTRARY DEPOSITION TESTIMONY

In this statement, the President admits that he and Ms. Lewinsky were alone on a number of occasions. He refused to make this admission in his deposition in the *Jones* case. During the deposition, the following exchange occurred:

Q. Mr. President, before the break, we were talking about Monica Lewinsky. At any time were you and Monica Lewinsky together alone in the Oval Office?

A. I don't recall, but as I said, when she worked in the legislative affairs office, they always had somebody there on the weekends. I typically work some on the weekends. Sometimes they'd bring me things on the weekends. She—it seems to me she brought things to me once or twice on the weekends. In that case, whatever time she would be in there, drop if off, exchange a few words and go, she was there. I don't have any specific recollections of what the issues were, what was going on, but when the Congress is there, we're working all the time, and typically I would do some work on one of the days of the weekends in the afternoon.

Q. So I understand, your testimony is that it was possible, then, that you were alone with her, but you have no specific recollection of that ever happening?

A. Yes, that's correct. It's possible that she, in, while she was working there, brought something to me and that at the time she brought it to me, she was the only person there. That's possible.

(WJC 1/17/98 Dep., pgs. 52–53)

After telling this verbose lie under oath, the President was given an opportunity to correct himself. This exchange followed:

Q. At any time have you and Monica Lewinsky ever been alone together in any room in the White House?

A. I think I testified to that earlier. I think that there is a, it is—I have no specific recollection, but it seems to me that she was on duty on a couple of occasions working for the legislative affairs office and brought me some things to sign, something on the weekend. That's—I have a general memory of that.

Q. Do you remember anything that was said in any of those meetings?

A. No. You know, we just had conversation, I don't remember.

(WJC 1/17/98 Dep., pgs. 52–53)

Before the grand jury, the President maintained that he testified truthfully at his deposition, a lie which provides, in part, the basis for Article I, Item 2. He stated, "My goal in this deposition was to be truthful, but not particularly helpful . . . I was determined to walk through the mind field of this deposition without violating the law, and I believe I did." (WJC 8/17/98 GJ, p. 80; H.Doc. 105–311, p. 532) But contrary to his deposition testimony, he certainly was alone with Ms. Lewinsky when she was not delivering papers, as the President conceded in his prepared grand jury statement.

In other words, the President's assertion before the grand jury that he was alone with Ms. Lewinsky, but that he testified truthfully in his deposition, is inconsistent. Yet, to this day, both the President and his attorneys have insisted that he did not

lie at his deposition and that he did not lie when he swore under oath that he did not lie at his deposition.

In addition to his lie about not recalling being alone with Ms. Lewinsky, the President told numerous other lies at his deposition. All of those lies are incorporated in Article I, Item 2.

TESTIMONY CONCERNING THE FALSE AFFIDAVIT

Article I, Item 3 charges the President with providing perjurious, false and misleading testimony before a federal grand jury concerning false and misleading statements his attorney Robert Bennett made to Judge Wright at the President's deposition. In one statement, while objecting to questions regarding Ms. Lewinsky, Mr. Bennett misled the Court, perhaps knowingly, stating, "Counsel [for Ms. Jones] is fully aware that Ms. Lewinsky has filed, has an affidavit which they are in possession of saying that there is absolutely no sex of any kind in any manner, shape or form, with President Clinton[.]" (WJC 1/17/98 Dep., pgs. 53–54) When Judge Wright interrupted Mr. Bennett and expressed her concern that he might be coaching the President, Mr. Bennett responded, "In preparation of the witness for this deposition, the witness is *fully aware of Ms. Lewinsky's affidavit,* so I have not told him a single thing he doesn't know[.]" (WJC 1/17/98 Dep., p. 54) (Emphasis added)

When asked before the grand jury about his statement to Judge Wright, the President testified, "I'm not even sure I paid attention to what he was saying," (WJC 8/17/98 GJ, p. 24; H.Doc. 105–3131, p. 476) He added, "I didn't pay much attention to this conversation, which is why, when you started asking me about this, I asked to see the deposition." (WJC 8/17/98 GJ, p. 24; H.Doc. 105–311, p. 477) Finally, "I don't believe I ever even focused on what Mr. Bennett said in the exact words he did until I started reading this transcript carefully for this hearing. That moment, the whole argument just passed me by." (WJC 8/17/98 GJ, p. 29; H.Doc. 105–311, p. 481)

This grand jury testimony defies common sense. During his deposition testimony, the President admittedly misled Ms. Jones' attorneys about his affair with Ms. Lewinsky, which continued while Ms. Jones' lawsuit was pending, because he did not want the truth to be known. Of course, when Ms. Lewinsky's name is mentioned during the deposition, particularly in connection with sex, the President is going to listen. Any doubts as to whether he listened to Mr. Bennett's representations are eliminated by watching the videotape of the President's deposition. The videotape shows the President looking directly at Mr. Bennett, paying close attention to his argument to Judge Wright.

FALSE TESTIMONY CONCERNING OBSTRUCTION OF JUSTICE

Article I, Item 4 concerns the President's grand jury perjury regarding his efforts to influence the testimony of witnesses and his efforts to impede discovery in the *Jones* v. *Clinton* lawsuit. These lies are perhaps the most troubling, as the President used them in an attempt to conceal his criminal actions and the abuse of his office.

For example, the President testified before the grand jury that he recalled telling Ms. Lewinsky that if Ms. Jones' lawyers requested the gifts exchanged between Ms. Lewinsky and the President, she should provide them. (WJC 8/17/98 GJ, p. 43; H.Doc. 105–311, p. 495) He stated, "And I told her that if they asked her for gifts, she'd have to give them whatever she had, that that's what the law was." (Id.) This testimony is false, as demonstrated by both Ms. Lewinsky's testimony and common sense.

Ms. Lewinsky testified that on December 28, 1997, she discussed with the President the subpoena's request for her to produce gifts, including a hat pin. She told the President that it concerned her, (ML 8/6/98 GJ, p. 151; H.Doc. 105–311, p. 871) and he said that it "bothered" him too. (ML 8/20/98 GJ, p. 66; H.Doc. 105–311, p. 1122) Ms. Lewinsky then suggested that she give the gifts to someone, maybe to Betty. But rather than instructing her to turn the gifts over to Ms. Jones' attorneys, the President replied, "I don't know" or "Let me think about that." (ML 8/6/98 GJ, p. 152; H.Doc. 105–311, p. 872) Several hours later, Ms. Currie called Ms. Lewinsky on her cellular phone and said, "I understand you have something to give me" or "the President said you have something to give me." (ML 8/6/98 GJ, pgs. 154–155; H.Doc. 105–311, pgs. 874–875)

Although Ms. Currie agrees that she picked up the gifts from Ms. Lewinsky, Ms. Currie testified that "the best" she remembers is that Ms. Lewinsky called her. (BC 5/6/98 GJ, p. 105; H.Doc. 105–316, p. 581) She later conceded that Ms. Lewinsky's memory may be better than hers on this point. (BC 5/6/98 GJ, p. 126; H.Doc. 105–316, p. 584) A telephone record corroborates Ms. Lewinsky, revealing that Ms. Currie did call her from her cellular phone several hours after Ms. Lewinsky's meet-

ing with the President. The only logical reason Ms. Currie called Ms. Lewinsky to retrieve gifts from the President is that the President told her to do so. He would not have given this instruction if he wished the gifts to be given to Ms. Jones' attorneys.

TESTIMONY CONCERNING MS. CURRIE

The President again testified falsely when he told the grand jury that he was simply trying to "refresh" his recollection when he made a series of statements to Ms. Currie the day after his deposition. (WJC 8/17/98 GJ, p. 131; H.Doc. 105–311, p. 583) Ms. Currie testified that she met with the President at about 5:00 P.M. on January 18, 1998, and he proceeded to make these statements to her:

(1) I was never really alone with Monica, right?
(2) You were always there when Monica was there, right?
(3) Monica came on to me, and I never touched her, right?
(4) You could see and hear everything, right?
(5) She wanted to have sex with me, and I cannot do that.

(BC 1/27/98 GJ, pgs. 70–75; H.Doc. 105–316, pgs. 559–560; BC 7/22/98 GJ, pgs. 6–7; H.Doc. 105–316, p. 664)

Ms. Currie testified that these were more like statements than questions, and that, as far as she understood, the President wanted her to agree with the statements. (BC 1/27/98 GJ, p. 74; H.Doc. 105–316, p. 559)

The President was asked specifically about these statements before the grand jury. He did not deny them, but said that he was "trying to refresh [his] memory about what the facts were." (WJC 8/17/98 GJ, p. 131; H.Doc. 105–311, p. 583) He added that he wanted to "know what Betty's memory was about what she heard," (WJC 8/17/98 GJ, p. 54; H.Doc. 105–316, p. 506) and that he was "trying to get as much information as quickly as [he] could." (WJC 8/17/98 GJ, p. 56; H.Doc. 105–311, p. 508) Logic demonstrates that the President's explanation is contrived and false.

A person does not refresh his recollection by firing declarative sentences dressed up as leading questions to his secretary. If the President was seeking information, he would have asked Ms. Currie what she recalled. Additionally, a person does not refresh his recollection by asking questions concerning factual scenarios of which the listener was unaware, or worse, of which the declarant and the listener knew were false. How would Ms. Currie know if she was always there when Ms. Lewinsky was there? Ms. Currie, in fact, acknowledged during her grand jury testimony that Ms. Lewinsky could have visited the President at the White House when Ms. Currie was not there. (BC 7/22/98 GJ, pgs. 65–66; H.Doc. 105–316, p. 679) Ms. Currie also testified that there were several occasions when the President and Ms. Lewinsky were in the Oval Office or study area without anyone else present. (BC 1/27/98 GJ, pgs. 32–33, 36–38; H.Doc. 105–316, pgs. 552–553)

More importantly, the President admitted in his statement to the grand jury that he was alone with Ms. Lewinsky on several occasions. (WJC 8/17/98 GJ, pgs. 9–10; H.Doc. 105–311, pgs. 460–461) Thus, by his own admission, his statement to Ms. Currie about never being alone with Ms. Lewinsky was false. And if they were alone together, Ms. Currie certainly could not say whether the President touched Ms. Lewinsky or not.

The statement about whether Ms. Currie could see and hear everything is also refuted by the President's own grand jury testimony. During his "intimate" encounters with Ms. Lewinsky, he ensured everyone, including Ms. Currie, was excluded. (WJC 8/17/98 GJ, p. 53; H.Doc. 105–311, p. 505) Why would someone refresh his recollection by making a false statement of fact to a subordinate? The answer is obvious—he would not.

Lastly, the President stated in the grand jury that he was "downloading" information in a "hurry," apparently explaining that he made these statements because he did not have time to listen to answers to open-ended questions. (WJC 8/17/98 GJ, p. 56; H.Doc. 105–311, p. 508) But, if he was in such a hurry, why did the President not ask Ms. Currie to refresh his recollection when he spoke with her on the telephone the previous evening? He also has no adequate explanation as to why he could not spend an extra five or 10 minutes with Ms. Currie on January 18 to get her version of the events. In fact, Ms. Currie testified that she first met the President on January 18 while he was on the White House putting green, and he told her to go into the office and he would be in in a few minutes. (BC 1/27/98 GJ, pgs. 67–70; H.Doc. 105–316, pgs. 558–559) And if he was in such a hurry, why did he repeat these statements to Ms. Currie a few days later? (BC 1/27/98 GJ, pgs. 80–81; H.Doc. 105–316, pgs. 560–561) The reason for these statements had nothing to

do with time constraints or refreshing recollection; he had just finished lying during the *Jones* deposition about these issues, and he needed corroboration from his secretary.

TESTIMONY ABOUT INFLUENCING AIDES

Not only did the President lie about his attempts to influence Ms. Currie's testimony, but he lied about his attempts to influence the testimony of some of his top aides. Among the President's lies to his aides, described in detail later in this brief, were that Ms. Lewinsky did not perform oral sex on him, and that Ms. Lewinsky stalked him while he rejected her sexual demands. These lies were then disseminated to the media and attributed to White House sources. They were also disseminated to the grand jury.

When the President was asked about these lies before the grand jury, he testified:

"And so I said to them things that were true about this relationship. That I used—in the language I used, I said, there's nothing going on between us. That was true. I said, I have not had sex with her as I defined it. That was true. And did I hope that I never would have to be here on this day giving this testimony? Of course.

"But I also didn't want to do anything to complicate this matter further. So I said things that were true. They may have been misleading, and if they were I have to take responsibility for it, and I'm sorry."

(WJC 8/17/98 GJ, p. 106; H.Doc. 105–311, p. 558)

To accept this grand jury testimony as truth, one must believe that many of the President's top aides engaged in a concerted effort to lie to the grand jury in order to incriminate him at the risk of subjecting themselves to a perjury indictment. We suggest that it is illustrative of the President's character that he never felt any compunction in exposing others to false testimony charges, so long as he could conceal his own perjuries. Simply put, such a conspiracy did not exist.

The above are merely highlights of the President's grand jury perjury, and there are numerous additional examples. In order to keep these lies in perspective, three facts must be remembered. First, before the grand jury, the President was not lying to cover up an affair and protect himself from embarrassment, as concealing the affair was now impossible. Second, the President could no longer argue that the facts surrounding his relationship with Ms. Lewinsky were somehow irrelevant or immaterial, as the Office of Independent Counsel and the grand jury had mandates to explore them. Third, he cannot claim to have been surprised or unprepared for questions about Ms. Lewinsky before the grand jury, as he spent days with his lawyer, preparing responses to such questions.

THE PRESIDENT'S METHOD

Again, the President carefully crafted his statements to give the appearance of being candid, when actually his intent was the opposite. In addition, throughout the testimony, whenever the President was asked a specific question that could not be answered directly without either admitting the truth or giving an easily provable false answer, he said, "I rely on my statement." 19 times he relied on this false and misleading statement; nineteen times, then, he repeated those lies in "answering" questions propounded to him. (See eg. WJC 8/17/98 GJ, pg. 139; H.Doc. 105–311, p. 591)

THE HOUSE COMMITTEE'S REQUEST

In an effort to avoid unnecessary work and to bring its inquiry to an expeditious end, the Judiciary Committee of the House of Representatives submitted to the President 81 requests to admit or deny specific facts relevant to this investigation. (Exhibit 18) Although, for the most part, the questions could have been answered with a simple "admit" or "deny," the President elected to follow the pattern of selective memory, reference to other testimony, blatant untruths, artful distortions, outright lies, and half truths. When he did answer, he engaged in legalistic hair-splitting in an obvious attempt to skirt the whole truth and to deceive and obstruct the due proceedings of the Committee.

THE PRESIDENT REPEATS HIS FALSITIES

Thus, on at least 23 questions, the President professed a lack of memory. This from a man who is renowned for his remarkable memory, for his amazing ability to recall details.

In at least 15 answers, the President merely referred to "White House Records." He also referred to his own prior testimony and that of others. He answered several of the requests by merely restating the same deceptive answers that he gave to the grand jury. We will point out several false statements in this Brief.

In addition, the half-truths, legalistic parsings, evasive and misleading answers were obviously calculated to obstruct the efforts of the House Committee. They had the effect of seriously hampering its ability to inquire and to ascertain the truth. The President has, therefore, added obstruction of an inquiry and an investigation before the Legislative Branch to his obstructions of justice before the Judicial Branch of our constitutional system of government.

THE EARLY ATTACK ON MS. LEWINSKY

After his deposition, the power and prestige of the Office of President was marshaled to destroy the character and reputation of Monica Lewinsky, a young woman that had been ill-used by the President. As soon as her name surfaced, the campaign began to muzzle any possible testimony, and to attack the credibility of witnesses, in a concerted effort to obstruct the due administration of justice in a lawsuit filed by one female citizen of Arkansas. It almost worked.

When the President testified at his deposition that he had no sexual relations, sexual affair or the like with Monica Lewinsky, he felt secure. Monica Lewinksy, the only other witness was on board. She had furnished a false affidavit also denying everything. Later, when he realized from the January 18, 1998, Drudge Report that there were taped conversations between Ms. Lewinsky and Linda Tripp, he had to develop a new story, and he did. In addition, he recounted that story to White House aides who passed it on to the grand jury in an effort to obstruct that tribunal too.

On Wednesday, January 21, 1998, *The Washington Post* published a story entitled "Clinton Accused of Urging Aide to Lie; Starr Probes Whether President Told Woman to Deny Alleged Affair to Jones' Lawyers." The White House learned the substance of the *Post* story on the evening of January 20, 1998.

MR. BENNETT'S REMARK

After the President learned of the existence of the story, he made a series of telephone calls.

At 12:08 a.m. he called his attorney, Mr. Bennett, and they had a conversation. The next morning, Mr. Bennett was quoted in the Washington Post stating:

> "The President adamantly denies he ever had a relationship with Ms. Lewinsky and she has confirmed the truth of that." He added, "This story seems ridiculous and I frankly smell a rat."

ADDITIONAL CALLS

After that conversation, the President had a half hour conversation with White House counsel, Bruce Lindsey.

At 1:16 a.m., the President called Betty Currie and spoke to her for 20 minutes.

He then called Bruce Lindsey again.

At 6:30 a.m. the President called Vernon Jordan.

After that, the President again conversed with Bruce Lindsey.

This flurry of activity was a prelude to the stories which the President would soon inflict upon top White House aides and advisors.

THE PRESIDENT'S STATEMENTS TO STAFF

ERSKINE BOWLES

On the morning of January 21, 1998, the President met with White House Chief of Staff, Erskine Bowles, and his two deputies, John Podesta and Sylvia Matthews.

Erskine Bowles recalled entering the President's office at 9:00 a.m. that morning. He then recounts the President's immediate words as he and two others entered the Oval Office:

> And he looked up at us and he said the same thing he said to the American people.
>
> He said, "I want you to know I did not have sexual relationships with this woman, Monica Lewinsky. I did not ask anybody to lie. And when the facts come out, you'll understand."

(Bowles, 4/2/98 GJ, p. 84; H.Doc. 105–316, p. 239) After the President made that blanket denial, Mr. Bowles responded:

I said, "Mr. President, I don't know what the facts are. I don't know if they're good, bad, or indifferent. But whatever they are, you ought to get them out. And you ought to get them out rignt now."

(Bowles, 4/2/98 GJ, p. 84; H.Doc. 105–316, p. 239)

When counsel asked whether the President responded to Bowles' suggestion that he tell the truth, Bowles responded:

I don't think he made any response, but he didn't disagree with me.

(Bowles, 4/2/98 GJ, p. 84; H.Doc. 105–316, p. 239)

JOHN PODESTA

January 21, 1998

Deputy Chief John Podesta also recalled a meeting with the President on the morning of January 21, 1998.

He testified before the grand jury as to what occurred in the Oval Office that morning:

A. And we started off meeting—we didn't—I don't think we said anything. And I think the President directed this specifically to Mr. Bowles. He said, "Erskine, I want you to know that this story is not true."

Q. What else did he say?

A. He said that—that he had not had a sexual relationship with her, and that he never asked anybody to lie.

(Podesta, 6/16/98 GJ, p. 85; H.Doc. 105–316, p. 3310)

January 23, 1998

Two days later, on January 23, 1998, Mr. Podesta had another discussion with the President:

"I asked him how he was doing, and he said he was working on this draft and he said to me that he never had sex with her, and that—and that he never asked—you know, he repeated the denial, but he was extremely explicit in saying he never had sex with her."

Then Podesta testified as follows:

Q. Okay. Not explicit, in the sense that he got more specific than sex, than the word "sex."

A. Yes, he was more specific than that.

Q. Okay, share that with us.

A. Well, I think he said—he said that—there was some spate. Of, you know, what sex acts were counted, and he said that he had never had sex with her in any way whatsoever——

Q. Okay.

A. That they had not had oral sex.

(Podesta, 6/16/98 GJ, p. 92; H.Doc. 105–316, p. 3311) (Exhibit V)

SIDNEY BLUMENTHAL

Later in the day on January 21, 1998, the President called Sidney Blumenthal to his office. It is interesting to note how the President's lies become more elaborate and pronounced when he has time to concoct this newest line of defense. When the President spoke to Mr. Bowles and Mr. Podesta, he simply denied the story. But, by the time he spoke to Mr. Blumenthal, the President has added three new angles to his defense strategy: (1) he now portrays Monica Lewinsky as the aggressor; (2) he launches an attack on her reputation by portraying her as a "stalker"; and (3) he presents himself as the innocent victim being attacked by the forces of evil.

Note well this recollection by Mr. Blumenthal in his June 4, 1998 testimony: (Chart U)

And it was at this point that he gave his account of what had happened to me and he said that Monica—and it came very fast. He said, "Monica Lewinsky came at me and made a sexual demand on me." He rebuffed her. He said, "I've gone down that road before, I've caused pain for a lot of people and I'm not going to do that again." She threatened him. She said that she would tell people they'd had an affair, that she was known as the stalker among her peers, and that she hated it and if

she had an affair or said she had an affair then she wouldn't be the stalker anymore.

(Blumenthal, 6/4/98 GJ, p. 49; H.Doc. 105–316, p. 185)

And then consider what the President told Mr. Blumenthal moments later:

And he said, "I feel like a character in a novel. I feel like somebody who is surrounded by an oppressive force that is creating a lie about me and I can't get the truth out. I feel like the character in the novel *Darkness at Noon.*

And I said to him, "When this happened with Monica Lewinsky, were you alone?" He said, "Well, I was within eyesight or earshot of someone."

(Blumenthal, 6/4/98 GJ, p. 50; H.Doc. 105–316, p. 185)

At one point, Mr. Blumenthal was asked by the grand jury to describe the President's manner and demeanor during the exchange.

Q. In response to my question how you responded to the President's story about a threat or discussion about a threat from Ms. Lewinsky, you mentioned you didn't recall specifically. Do you recall generally the nature of your response to the President?

A. It was generally sympathetic to the President. And I certainly believed his story. It was a very heartfelt story, he was pouring out his heart, and I believed him.

(Blumenthal, 6/25/98 GJ, pgs. 16–17; H.Doc. 105–316, pgs. 192–193)

BETTY CURRIE

When Betty Currie testified before the grand jury, she could not recall whether she had another one-on-one discussion with the President on Tuesday, January 20, or Wednesday, January 21. But she did state that on one of those days, the President summoned her back to his office. At that time, the President recapped their now-infamous Sunday afternoon post-deposition discussion in the Oval Office. It was at that meeting that the President made a series of statements to Ms. Currie, to some of which she could not possibly have known the answers. (e.g. "Monica came on to me and I never touched her, right?") (BC 1/27/98 GJ, pgs. 70–75; H.Doc. 105–316, pgs. 559–560; BC 7/22/98 GJ, pgs. 6–7; H.Doc. 105–316, p. 664)

When he spoke to her on January 20 or 21, he spoke in the same tone and demeanor that he used in his January 18 Sunday session.

Ms. Currie stated that the President may have mentioned that she might be asked about Monica Lewinsky. (BC, 1/24/98 Int., p. 8; H.Doc. 105–316, p. 536)

MOTIVE FOR LIES TO STAFF

It is abundantly clear that the President's assertions to staff were designed for dissemination to the American people. But it is more important to understand that the President intended his aides to relate that false story to investigators and grand jurors alike. We know that this is true for the following reasons: the Special Division had recently appointed the Office of Independent Counsel to investigate the Monica Lewinsky matter; the President realized that Jones' attorneys and investigators were investigating this matter; the *Washington Post* journalists and investigators were exposing the details of the Lewinsky affair; and, an investigation relating to perjury charges based on Presidential activities in the Oval Office would certainly lead to interviews with West Wing employees and high level staffers. Because the President would not appear before the grand jury, his version of events would be supplied by those staffers to whom he had lied. The President actually acknowledged that he knew his aides might be called before the grand jury. (WJC 8/17/98 GJ, pgs. 105–109; H.Doc. 105–311, pgs. 557–557)

In addition, Mr. Podesta testified that he knew that he was likely to be a witness in the ongoing grand jury criminal investigation. He said that he was "sensitive about not exchanging information because I knew I was a potential witness." (Podesta 6/23/98 GJ, p. 79; H.Doc. 105–316, p. 3332) He also recalled that the President volunteered to provide information about Ms. Lewinsky to him even though Mr. Podesta had not asked for these details. (Podesta 6/23/98 GJ, p. 79; H.Doc. 105–316, p. 3332)

In other words, the President's lies and deceptions to his White House aides, coupled with his steadfast refusal to testify had the effect of presenting a false account of events to investigators and grand jurors. The President's aides believed the President when he told them his contrived account. The aides' eventual testimony provided the President's calculated falsehoods to the grand jury which, in turn, gave

the jurors an inaccurate and misleading set of facts upon which to base any decisions.

WIN, WIN, WIN

President Clinton also implemented a win-at-all-costs strategy calculated to obstruct the administration of justice in the *Jones* case and in the grand jury. This is demonstrated in testimony presented by Richard "Dick" Morris to the federal grand jury.

Mr. Morris, a former presidential advisor, testified that on January 21, 1998, he met President Clinton and they discussed the turbulent events of the day. The President again denied the accusations against him. After further discussions, they decided to have an overnight poll taken to determine if the American people would forgive the President for adultery, perjury, and obstruction of justice. When Mr. Morris received the results, he called the President:

"And I said, 'They're just too shocked by this. It's just too new, it's too raw.' And I said, 'And the problem is they're willing to forgive you for adultery, but not for perjury or obstruction of justice or the various other things.'"

(Morris 8/18/98 GJ. p. 28; H.Doc. 105–316, p. 2929)

Morris recalls the following exchange:

Morris: And I said, "They're just not ready for it." meaning the voters.

WJC: Well, we just have to win, then.

(Morris 8/18/98 GJ, p. 30; H.Doc. 105–216, p. 2930)

The President, of course, cannot recall this statement, (Presidential Responses to Questions, Numbers 69, 70, and 71)

THE PLOT TO DISCREDIT MONICA LEWINSKY

In order to "win," it was necessary to convince the public, and hopefully the grand jurors who read the newspapers, that Monica Lewinsky was unworthy of belief. If the account given by Ms. Lewinsky to Linda Tripp was believed, then there would emerge a tawdry affair in and near the Oval Office. Moreover, the President's own perjury and that of Monica Lewinsky would surface. To do this, the President employed the full power and credibility of the White House and its press corps to destroy the witness. Thus on January 29, 1998:

Inside the White House, the debate goes on about the best way to destroy That Woman, as President Bill Clinton called Monica Lewinsky. Should they paint her as a friendly fantasist or a malicious stalker? (*The Plain Dealer*)

Again:

"That poor child has serious emotional problems," Rep. Charles Rangel, Democrat of New York, said Tuesday night before the State of the Union. "She's fantasizing. And I haven't heard that she played with a full deck in her other experiences." (*The Plain Dealer*)

From Gene Lyons, an Arkansas columnist on January 30:

"But it's also very easy to take a mirror's eye view of this thing, look at this thing from a completely different direction and take the same evidence and posit a totally innocent relationship in which the President was, in a sense, the victim of someone rather like the woman who followed David Letterman around." (NBC News)

From another "source" on February 1:

"Monica had become known at the White House, says one source, as 'the stalker.'"

And on February 4:

"The media have reported that sources describe Lewinsky as 'infatuated' with the President, 'star struck' and even 'a stalker'." (*Buffalo News*)

Finally, on January 31:

"One White House aide called reporters to offer information about Monica Lewinsky's past, her weight problems and what the aide said was her nickname—'The Stalker.'"

"Junior staff members, speaking on the condition that they not be identified, said she was known as a flirt, wore her skirts too short, and was 'A little bit weird.'"

"Little by little, ever since allegations of an affair between U.S. President Bill Clinton and Lewinsky surfaced 10 days ago, White House sources have waged a be-

hind-the-scenes campaign to portray her as an untrustworthy climber obsessed with the President."

"Just hours after the story broke, one White House source made unsolicited calls offering that Lewinsky was the 'troubled' product of divorced parents and may have been following the footsteps of her mother, who wrote a tell-all book about the private lives of three famous opera singers."

"One story had Lewinsky following former Clinton aide George Stephanopoulos to Starbucks. After observing what kind of coffee he ordered, she showed up the next day at his secretary's desk with a cup of the same coffee to 'surprise him.'" (Toronto Sun)

This sounds familiar because it is the exact tactic used to destroy the reputation and credibility of Paula Jones. The difference is that these false rumors were emanating from the White House, the bastion of the free world, to protect one man from being forced to answer for his deportment in the highest office in the land.

On August 17, 1998, the President testified before the grand jury. He then was specifically asked whether he knew that his aides (Blumenthal, Bowles, Podesta and Currie) were likely to be called before the grand jury.

Q. It may have been misleading, sir, and you knew though, after January 21st when the Post article broke and said that Judge Starr was looking into this, you knew that they might be witnesses. You knew that they might be called into a grand jury, didn't you?

WJC. That's right. I think I was quite careful what I said after that. I may have said something to all these people to that effect, but I'll also—whenever anybody asked me any details, I said, look, I don't want you to be a witness or I turn you into a witness or give you information that would get you in trouble. I just wouldn't talk. I, by and large, didn't talk to people about it.

Q. If all of these people—let's leave Mrs. Currie for a minute. Vernon Jordan, Sid Blumenthal, John Podesta, Harold Ickes, Erskine Bowles, Harry Thomasson, after the story broke, after Judge Starr's involvement was known on January 21st, have said that you denied a sexual relationship with them. Are you denying that?

WJC. No.

Q. And you've told us that you——

WJC. I'm just telling you what I meant by it. I told you what I meant by it when they started this deposition.

Q. You've told us now that you were being careful, but that it might have been misleading. Is that correct?

WJC. It must have been * * * So, what I was trying to do was to give them something they could—that would be true, even if misleading in the context of this deposition, and keep them out of trouble, and let's deal—and deal with what I thought was the almost ludicrous suggestion that I had urged someone to lie or tried to suborn perjury, in other words.

(WJC 8/17/97 GJ, pgs. 106–108; H.Doc. 105–311, pgs. 558–560)

As the President testified before the grand jury, he maintained that he was being truthful with his aides. (Exhibit 20) He stated that when he spoke to them, he was very careful with his wording. The President stated that he wanted his statement regarding "sexual relations" to be literally true because he was only referring to intercourse.

However, recall that John Podesta said that the President denied sex "in any way whatsoever" "including oral sex." The President told Mr. Podesta, Mr. Bowles, Ms. Williams, and Harold Ickes that he did not have a "sexual relationship" with that woman.

Importantly, seven days after the President's grand jury appearance, the White House issued a document entitled, "Talking Points January 24, 1998." (Chart W; Exhibit 16) This "Talking Points" document outlines proposed questions that the President may be asked. It also outlines suggested answers to those questions. The "Talking Points" purport to state the President's view of sexual relations and his view of the relationship with Monica Lewinsky. (Exhibit 17)

The "Talking Points" state as follows:

Q. *What acts does the President believe constitute a sexual relationship?*

A. I can't believe we're on national television discussing this. I am not about to engage in an "act-by-act" discussion of what constitutes a sexual relationship.

Q. *Well, for example, Ms. Lewinsky is on tape indicating that the President does not believe oral sex is adultery. Would oral sex, to the President, constitute a sexual relationship?*

A. Of course it would.

The President's own talking points refute the President's "literal truth" argument.

EFFECT OF THE PRESIDENT'S CONDUCT

Some "experts" have questioned whether the President's deportment affects his office, the government of the United States or the dignity and honor of the country.

Our founders decided in the Constitutional Convention that one of the duties imposed upon the President is to "take care that the laws be faithfully executed." Furthermore, he is required to take an oath to "Preserve, protect and defend the Constitution of the United States." Twice this President stood on the steps of the Capitol, raised his right hand to God and repeated that oath.

The Fifth Amendment to the Constitution of the United States provides that no person shall "be deprived of life, liberty or property without due process of law."

The Seventh Amendment insures that in civil suits "the right of trial by jury shall be preserved."

Finally, the Fourteenth Amendment guarantees due process of law and the equal protection of the laws.

THE EFFECT ON MS. JONES' RIGHTS

Paula Jones is an American citizen, just a single citizen who felt that she had suffered a legal wrong. More important, that legal wrong was based upon the Constitution of the United States. She claimed essentially that she was subjected to sexual harassment, which, in turn, constitutes discrimination on the basis of gender. The case was not brought against just any citizen, but against the President of the United States, who was under a legal and moral obligation to preserve and protect Ms. Jones' rights. It is relatively simple to mouth high-minded platitudes and to prosecute vigorously right violations by someone else. It is, however, a test of courage, honor and integrity to enforce those rights against yourself. The President failed that test. As a citizen, Ms. Jones enjoyed an absolute constitutional right to petition the Judicial Branch of government to redress that wrong by filing a lawsuit in the United States District Court, which she did. At this point she became entitled to a trial by jury if she chose, due process of law and the equal protection of the laws no matter who the defendant was in her suit. Due process contemplates that right to a full and fair trial, which, in turn, means the right to call and question witnesses, to cross-examine adverse witnesses and to have her case decided by an unbiased and fully informed jury. What did she actually get? None of the above.

On May 27, 1997, the United States Supreme Court ruled in a nine to zero decision that, "like every other citizen," Paula Jones "has a right to an orderly disposition of her claims." In accordance with the Supreme Court's decision, United States District Judge Susan Webber Wright ruled on December 11, 1997, that Ms. Jones was entitled to information regarding state or federal employees with whom the President had sexual relations from May, 1986 to the present. Judge Wright had determined that the information was reasonably calculated to lead to the discovery of admissible evidence. Six days after this ruling, the President filed an answer to Ms. Jones' Amended Complaint. The President's Answer stated: "President Clinton denies that he engaged in any improper conduct with respect to plaintiff or any other woman."

Ms. Jones' right to call and depose witnesses was thwarted by perjurious and misleading affidavits and motions; her right to elicit testimony from adverse witnesses was compromised by perjury and false and misleading statements under oath. As a result, had a jury tried the case, it would have been deprived of critical information.

That result is bad enough, but it reaches constitutional proportions when denial of the civil rights is directed by the President of the United States who twice took an oath to preserve, protect and defend those rights. But we now know what the "sanctity of an oath" means to the President.

THE EFFECT ON THE OFFICE OF PRESIDENT

Moreover, the President is the spokesman for the government and the people of the United States concerning both domestic and foreign matters. His honesty and integrity, therefore, directly influence the credibility of this country. When, as here, that spokesman is guilty of a continuing pattern of lies, misleading statements, and deceits over a long period of time, the believability of any of his pronouncements is seriously called into question. Indeed, how can anyone in or out of our country any longer believe anything he says? And what does that do to confidence in the honor and integrity of the United States?

Make no mistake, the conduct of the President is inextricably bound to the welfare of the people of the United States. Not only does it affect economic and national defense, but even more directly, it affects the moral and law-abiding fibre of the commonwealth, without which no nation can survive. When, as here, that conduct involves a pattern of abuses of power, of perjury, of deceit, of obstruction of justice and of the Congress, and of other illegal activities, the resulting damage to the honor and respect due to the United States is, of necessity, devastating.

THE EFFECT ON THE SYSTEM

Again: there is no such thing as non-serious lying under oath. Every time a witness lies, that witness chips a stone from the foundation of our entire legal system. Likewise, every act of obstruction of justice, of witness tampering or of perjury adversely affects the judicial branch of government like a pebble tossed into a lake. You may not notice the effect at once, but you can be certain that the tranquility of that lake has been disturbed. And if enough pebbles are thrown into the water, the lake itself may disappear. So too with the truth-seeking process of the courts. Every unanswered and unpunished assault upon it has its lasting effect and given enough of them, the system itself will implode.

That is why two women who testified before the Committee had been indicted, convicted and punished severely for false statements under oath in civil cases. And that is why only recently a federal grand jury in Chicago indicted four former college football players because they gave false testimony under oath to a grand jury. Nobody suggested that they should not be charged because their motives may have been to protect their careers and family. And nobody has suggested that the perjury was non-serious because it involved only lies about sports; i.e., betting on college football games.

DISREGARD OF THE RULE OF LAW

Apart from all else, the President's illegal actions constitute an attack upon and utter disregard for the truth, and for the rule of law. Much worse, they manifest an arrogant disdain not only for the rights of his fellow citizens, but also for the functions and the integrity of the other two co-equal branches of our constitutional system. One of the witnesses that appeared earlier likened the government of the United States to a three-legged stool. The analysis is apt, because the entire structure of our country rests upon three equal supports: the Legislative, the Judicial, and the Executive. Remove one of those supports, and the State will totter. Remove two and the structure will collapse altogether.

EFFECT ON THE JUDICIAL BRANCH

The President mounted a direct assault upon the truth-seeking process which is the very essence and foundation of the Judicial Branch. Not content with that, though, Mr. Clinton renewed his lies, half-truths and obstruction to this Congress when he filed his answers to simple requests to admit or deny. In so doing, he also demonstrated his lack of respect for the constitutional functions of the Legislative Branch.

Actions do not lose their public character merely because they may not directly affect the domestic and foreign functioning of the Executive Branch. Their significance must be examined for their effect on the functioning of the entire system of government. Viewed in that manner, the President's actions were both public and extremely destructive.

THE CONDUCT CHARGED WARRANTS CONVICTION AND REMOVAL

The Articles state offenses that warrant the President's conviction and removal from office. The Senate's own precedents establish that perjury and obstruction warrant conviction and removal from office. Those same precedents establish that the perjury and obstruction need not have any direct connection to the officer's official duties.

PRECEDENTS

In the 1980s, the Senate convicted and removed from office three federal judges for making perjurious statements. *Background and History of Impeachment Hearings Before the Subcomm. On the Constitution of the House Comm. on the Judiciary,* 105th Cong., 2nd Sess. at 190–193 (Comm. Print 1998), (Testimony of Charles Cooper) ("Cooper Testimony") Although able counsel represented each judge, none of them argued that perjury or making false statements are not impeachable offenses.

Nor did a single Congressman or Senator, in any of the three impeachment proceedings, suggest that perjury does not constitute a high crime and misdemeanor. Finally, in the cases of Judge Claiborne and Judge Nixon, it was undisputed that the perjury was not committed in connection with the exercise of the judges' judicial powers.

JUDGE NIXON

In 1989, Judge Walter L. Nixon, Jr., was impeached, convicted, and removed from office for committing perjury. Judge Nixon's offense stemmed from his grand jury testimony and statements to federal officers concerning his intervention in the state drug prosecution of Drew Fairchild, the son of Wiley Fairchild, a business partner of Judge Nixon's.

Although Judge Nixon had no official role or function in Drew Fairchild's case (which was assigned to a state court judge), Wiley Fairchild had asked Judge Nixon to help out by speaking to the prosecutor. Judge Nixon did so, and the prosecutor, a long-time friend of Judge Nixon's, dropped the case. When the FBI and the Department of Justice interviewed Judge Nixon, he denied any involvement whatsoever. Subsequently, a federal grand jury was empaneled and Judge Nixon again denied his involvement before that grand jury.

After a lengthy criminal prosecution, Judge Nixon was convicted on two counts of perjury before the grand jury and sentenced to five years in prison on each count. Not long thereafter, the House impeached Judge Nixon by a vote of 417 to 0. The first article of impeachment charged him with making the false or misleading statement to the grand jury that he could not "recall" discussing the Fairchild case with the prosecutor. The second article charged Nixon with making affirmative false or misleading statements to the grand jury that he had "nothing whatsoever officially or unofficially to do with the Drew Fairchild case." The third article alleged that Judge Nixon made numerous false statements (not under oath) to federal investigators prior to his grand jury testimony. *See* 135 Cong. Rec. H1802–03.

The House unanimously impeached Judge Nixon, and the House Managers' Report expressed no doubt that perjury is an impeachable offense:

> "It is difficult to imagine an act more subversive to the legal process than lying from the witness stand. A judge who violates his testimonial oath and misleads a grand jury is clearly unfit to remain on the bench. If a judge's truthfulness cannot be guaranteed, if he sets less than the highest standard for candor, how can ordinary citizens who appear in court be expected to abide by their testimonial oath?"

House of Representatives' Brief in Support of the Articles of Impeachment at 59 (1989). House Manager Sensenbrenner addressed the question even more directly:

> "There are basically two questions before you in connection with this impeachment. First, does the conduct alleged in the three articles of impeachment state an impeachable offense? There is really no debate on this point. The articles allege misconduct that is criminal and wholly inconsistent with judicial integrity and the judicial oath. Everyone agrees that a judge who lies under oath, or who deceives Federal investigators by lying in an interview, is not fit to remain on the bench."

135 Cong. Rec. S14,497 (Statement of Rep. Sensenbrenner)

The Senate agreed, overwhelmingly voting to convict Judge Nixon of perjury on the first two articles (89–8 and 78–19, respectively). As Senator Carl Levin explained:

> "The record amply supports the finding in the criminal trial that Judge Nixon's statements to the grand jury were false and misleading and constituted perjury. Those are the statements cited in articles I and II and it is on those articles that I vote to convict Judge Nixon and remove him from office."

135 Cong. Rec. S14,637 (Statement of Sen. Levin).

JUDGE HASTINGS

Also in 1989, the House impeached Judge Alcee L. Hastings for, among other things, committing numerous acts of perjury. The Senate convicted him, and he was removed from office. Initially, Judge Hastings had been indicted by a federal grand jury for conspiracy stemming from his alleged bribery conspiracy with his friend Mr. William Borders to "fix" cases before Judge Hastings in exchange for cash payments from defendants. Mr. Borders was convicted, but, at his own trial, Judge Hastings took the stand and unequivocally denied any participation in a conspiracy with Mr. Borders. The jury acquitted Judge Hastings on all counts. Nevertheless, the House

impeached Judge Hastings, approving seventeen articles of impeachment, fourteen of which were for lying under oath at his trial.

The House voted 413 to 3 to impeach. The House Managers' Report left no doubt that perjury alone is impeachable:

"It is important to realize that each instance of false testimony charged in the false statement articles is more than enough reason to convict Judge Hastings and remove him from office. Even if the evidence were insufficient to prove that Judge Hastings was part of the conspiracy with William Borders, which the House in no way concedes, the fact that he lied under oath to assure his acquittal is conduct that cannot be tolerated of a United States District Judge. To bolster one's defense by lying to a jury is separate, independent corrupt conduct. For this reason alone, Judge Hastings should be removed from public office."

The House of Representatives' Brief in Support of the Articles of Impeachment at 127–28 (1989). Representative John Conyers (D–Mich.) also argued for the impeachment of Judge Hastings:

"[W]e can no more close our eyes to acts that constitute high crimes and misdemeanors when practiced by judges whose views we approve than we could against judges whose views we detested. It would be disloyal . . . to my oath of office at this late state of my career to attempt to set up a double standard for those who share my philosophy and for those who may oppose it. In order to be true to our principles, we must demand that all persons live up to the same high standards that we demand of everyone else."

134 Cong. Rec. H6184 (1988) (Statement of Rep. Conyers).

JUDGE CLAIBORNE

In 1986, Judge Harry E. Claiborne was impeached, convicted, and removed from office for making false statements under penalties of perjury. In particular, Judge Claiborne had filed false income tax returns in 1979 and 1980, grossly understating his income. As a result, he was convicted by a jury of two counts of willfully making a false statement on a federal tax return in violation of 26 U.S.C. § 7206 (a). Subsequently, the House unanimously (406–0) approved four articles of impeachment. The proposition that Claiborne's perjurious personal income tax filings were not impeachable was never even seriously considered. As the House Managers explained:

"[T]he constitutional issues raised by the first two Articles of Impeachment [concerning the filing of false tax returns] are readily resolved. The Constitution provides that Judge Claiborne may be impeached and convicted for "High Crimes and Misdemeanors." Article II, Section 4. *The willful making or subscribing of a false statement on a tax return is a felony* offense under the laws of the United States. *The commission of such a felony is a proper basis for Judge Claiborne's impeachment and conviction in the Senate."*

Proceedings of the United States Senate Impeachment Trial of Judge Harry E. Claiborne, S. Doc. No. 99–48, at 40 (1986) (*Claiborne Proceedings"*) (emphases added).

House Manager Rodino, in his oral argument to the Senate, emphatically made the same point:

"Honor in the eyes of the American people lies in public officials who respect the law, not in those who violate the trust that has been given to them when they are trusted with public office. Judge Harry E. Claiborne has, sad to say, undermined the integrity of the judicial branch of Government. To restore that integrity and to maintain public confidence in the administration of justice, Judge Claiborne must be convicted on the fourth Article of Impeachment [that of reducing confidence in the integrity of the judiciary]."

132 Cong. Rec. S15,481 (1986) (Statement of Rep. Rodino).

The Senate agreed. Telling are the words of then-Senator Albert Gore, Jr. In voting to convict Judge Claiborne and remove him from office:

"The conclusion is inescapable that Claiborne filed false income tax returns and that he did so willfully rather than negligently. . . . Given the circumstances, it is incumbent upon the Senate to fulfill its constitutional responsibility and strip this man of his title. An individual who has knowingly falsified tax returns has no business receiving a salary derived from the tax dollars of honest citizens. More importantly, an individual quality of such reprehensible conduct ought not be permitted to exercise the awesome powers which the Constitution entrusts to the Federal Judiciary."

Claiborne Proceedings, S. Doc. No. 99–48, at 372 (1986).

APPLICATION TO THE PRESIDENT

To avoid the conclusive force of these recent precedents—and in particular the exact precedent supporting impeachment for, conviction, and removal for perjury—the only recourse for the President's defenders is to argue that a high crime or misdemeanor for a judge is not necessarily a high crime or misdemeanor for the President. The arguments advanced in support of this dubious proposition do not withstand serious scrutiny. (*See generally* Cooper Testimony, at 193)

The Constitution provides that Article III judges "shall hold their Offices during good Behavior, U.S. Const. Art. III, 1. Thus, these arguments suggest that judges are impeachable for "misbehavior" while other federal officials are only impeachable for treason, bribery, and other high crimes and misdemeanors.

The staff of the House Judiciary Committee in the 1970s and the National Commission on Judicial Discipline and Removal in the 1990s both issued reports rejecting these arguments. In 1974, the staff of the Judiciary Committee's Impeachment Inquiry issued a report which included the following conclusion:

"Does Article III, Section 1 of the Constitution, which states that judges 'shall hold their Offices during good Behaviour,' limit the relevance of the ten impeachments of judges with respect to presidential impeachment standards as has been argued by some? It does not. The argument is that 'good behavior' implies an additional ground for impeachment of judges not applicable to other civil officers. However, the only impeachment provision discussed in the Convention and included in the Constitution is Article II, Section 4, which by its expressed terms, applies to all civil officers, including judges, and defines impeachment offenses as 'Treason, Bribery, and other high Crimes and Misdemeanors.'"

Staff of House Comm. on the Judiciary, 93rd Cong. 2d Sess., *Constitutional Grounds for Presidential Impeachment* (Comm. Print 1974) ("1974 Staff Report") at 17.

The National Commission on Judicial Discipline and Removal came to the same conclusion. The Commission concluded that "the most plausible reading of the phrase 'during good Behavior' is that it means tenure for life, subject to the impeachment power. . . . The ratification debates about the federal judiciary seem to have proceeded on the assumption that good-behavior tenure meant removal only through impeachment and conviction." National Commission on Judicial Discipline and Removal, *Report of the National Commission on Judicial Discipline and Removal 17–18* (1993) (footnote omitted).

The record of the 1986 impeachment of Judge Claiborne also argues against different impeachment standards for federal judges and presidents. Judge Claiborne filed a motion asking the Senate to dismiss the articles of impeachment against him for failure to state impeachable offenses. One of the motion's arguments was that "[t]he standard for impeachment of a judge is different than that for other officers" and that the Constitution limited "removal of the judiciary to acts involving misconduct related to discharge of office." *Memorandum in Support of Motion to Dismiss the Articles of Impeachment on the Grounds They Do Not State Impeachable Offenses 4* (hereinafter cited as *"Claiborne Motion"*), reprinted in Hearings Before the Senate Impeachment Trial Committee, 99th Cong., 2d Sess. 245 (1986) (hereinafter cited as *"Senate Claiborne Hearings"*).

Representative Kastenmeier responded that "reliance on the term 'good behavior' as stating a sanction for judges is totally misplaced and virtually all commentators agree that that is directed to affirming the life tenure of judges during good behavior. It is not to set them down, differently, as judicial officers from civil officers." *Id.* at 81–82. He further stated that "[n]or . . . is there any support for the notion that . . . Federal judges are not civil officers of the United States, subject to the impeachment clause of article II of the Constitution." *Id.* at 81.

The Senate never voted on Claiborne's motion. However, the Senate was clearly not swayed by the arguments contained therein because it later voted to convict Judge Claiborne. 132 Cong. Rec. S15,760–62 (daily ed. Oct. 9, 1986). The Senate thus rejected the claim that the standard of impeachable offenses was different for judges than for presidents.

Moreover, even assuming that presidential high crimes and misdemeanors could be different from judicial ones, surely the President ought not be held to a lower standard of impeachability than judges. In the course of the 1980s judicial impeachments, Congress emphasized unequivocally that the removal from office of federal judges guilty of crimes indistinguishable from those currently charged against the President was essential to the preservation of the rule of law. If the perjury of just one judge so undermines the rule of law as to make it intolerable that he remain

in office, then how much more so does perjury committed by the President of the United States, who alone is charged with the duty "to take Care that the Laws be faithfully executed." (*See generally*, Cooper Testimony at 194)

It is just as devastating to our system of government when a President commits perjury. As the House Judiciary Committee stated in justifying an article of impeachment against President Nixon, the President not only has "the obligation that every citizen has to live under the law," but in addition has the duty "not merely to live by the law but to see that law faithfully applied." *Impeachment of Richard M. Nixon, President of the United States*, H. Rept. No. 93–1305, 93rd Cong., 2d Sess. at 180 (1974). The Constitution provides that he "shall take Care that the Laws be faithfully executed." U.S. Const. Art. II, § 3. When a President, as chief law enforcement officer of the United States, commits perjury, he violates this constitutional oath unique to his office and casts doubt on the notion that we are a nation ruled by laws and not men.

PERJURY AND OBSTRUCTION ARE AS SERIOUS AS BRIBERY

Further evidence that perjury and obstruction warrant conviction and removal comes directly from the text of the Constitution. Because the Constitution specifically mentions bribery, no one can dispute that it is an impeachable offense. U.S. Const., Art. II, § 4. Because the constitutional language does not limit the term, we must take it to mean all forms of bribery. Our statutes specifically criminalize bribery of witnesses with the intent to influence their testimony in judicial proceedings. 18 U.S.C. § 201(b)(3) & (4), (c)(2) & (3). *See also* 18 U.S.C. §§ 1503 (general obstruction of justice statute), 1512 (witness tampering statute). Indeed, in a criminal case, the efforts to provide Ms. Lewinsky with job assistance in return for submitting a false affidavit charged in the Articles might easily have been charged under these statutes. No one could reasonably argue that the President's bribing a witness to provide false testimony—even in a private lawsuit—does not rise to the level of an impeachable offense. The plain language of the Constitution indicates that it is.

Having established that point, the rest is easy. Bribing a witness is illegal because it leads to false testimony that in turn undermines the ability of the judicial system to reach just results. Thus, among other things, the Framers clearly intended impeachment to protect the judicial system from these kinds of attacks. Perjury and obstruction of justice are illegal for exactly the same reason, and they accomplish exactly the same ends through slightly different means. Simple logic establishes that perjury and obstruction of justice—even in a private lawsuit—are exactly the types of other high crimes and misdemeanors that are of the same magnitude as bribery.

HIGH CRIMES AND MISDEMEANORS

Although Congress has never adopted a fixed definition of "high crimes and misdemeanors," much of the background and history of the impeachment process contradicts the President's claim that these offenses are private and therefore do not warrant conviction and removal. Two reports prepared in 1974 on the background and history of impeachment are particularly helpful in evaluating the President's defense. Both reports support the conclusion that the facts in this case compel the conviction and removal of President Clinton.

Many have commented on the report on "Constitutional Grounds for Presidential Impeachment" prepared in February 1974 by the staff of the Nixon impeachment inquiry. The general principles concerning grounds for impeachment set forth in that report indicate that perjury and obstruction of justice are impeachable offenses. Consider this key language from the staff report describing the type of conduct which gives rise to impeachment:

"The emphasis has been on the significant effects of the conduct—*undermining the integrity of office, disregard of constitutional duties and oath of office,* arrogation of power, abuse of the governmental process, *adverse impact on the system of government.*"

1974 Staff Report at 26 (emphasis added).

Perjury and obstruction of justice clearly "undermine the integrity of office." They unavoidably erode respect for the office of the President. Such offenses obviously involve "disregard of [the President's] constitutional duties and oath of office." Moreover, these offenses have a direct and serious "adverse impact on the system of government." Obstruction of justice is by definition an assault on the due administration of justice—a core function of our system of government.

The thoughtful report on "The Law of Presidential Impeachment" prepared by the Association of the Bar of the City of New York in January of 1974 also places a

great deal of emphasis on the corrosive impact of presidential misconduct on the integrity of office:

It is our conclusion, in summary, that the grounds for

"impeachment are not limited to or synonymous with crimes . . . Rather, we believe that *acts which undermine the integrity of government* are appropriate grounds whether or not they happen to constitute offenses under the general criminal law. In our view, the essential nexus to damaging the integrity of government may be found in acts which constitute corruption in, or flagrant abuse of the powers of, official position. It may also be found in acts which, without directly affecting governmental processes, *undermine that degree of public confidence in the probity of executive and judicial officers that is essential to the effectiveness of government in a free society.*"

Association of the Bar of the City of New York, *The Law of Presidential Impeachment,* (1974) at 161 (emphasis added). The commission of perjury and obstruction of justice by a President are acts that without doubt "undermine that degree of public confidence in the probity of the [the President] that is essential to the effectiveness of government in a free society." Such acts inevitably subvert the respect for law which is essential to the well-being of our constitutional system.

That the President's perjury and obstruction do not directly involve his official conduct does not diminish their significance. The record is clear that federal officials have been impeached for reasons other than official misconduct. As set forth above, two recent impeachments of federal judges are compelling examples. In 1989, Judge Walter Nixon was impeached, convicted, and removed from office for committing perjury before a federal grand jury. Judge Nixon's perjury involved his efforts to fix a state case for the son of a business partner—a matter in which he had no official role. In 1986, Judge Harry E. Claiborne was impeached, convicted, and removed from office for making false statements under penalty of perjury on his income tax returns. That misconduct had nothing to do with his official responsibilities.

Nothing in the text, structure, or history of the Constitution suggests that officials are subject to impeachment only for official misconduct. Perjury and obstruction of justice—even regarding a private matter—are offenses that substantially affect the President's official duties because they are grossly incompatible with his preeminent duty to "take care that the laws be faithfully executed." Regardless of their genesis, perjury and obstruction of justice are acts of public misconduct—they cannot be dismissed as understandable or trivial. Perjury and obstruction of justice are not private matters; they are crimes against the system of justice, for which impeachment, conviction, and removal are appropriate.

The record of Judge Claiborne's impeachment proceedings affirms that conclusion. Representative Hamilton Fish, the ranking member of the Judiciary Committee and one of the House managers in the Senate trial, stated that "[i]mpeachable conduct does not have to occur in the course of the performance of an officer's official duties. Evidence of misconduct, misbehavior, high crimes, and misdemeanors can be justified upon one's private dealings as well as one's exercise of public office. That, of course, is the situation in this case." 132 Cong. Rec. H4713 (daily ed. July 22, 1986).

Judge Claiborne's unsuccessful motion that the Senate dismiss the articles of impeachment for failure to state impeachable offenses provides additional evidence that personal misconduct can justify impeachment. One of the arguments his attorney made for the motion was that "there is no allegation . . . that the behavior of Judge Claiborne in any way was related to misbehavior in his official function as a judge; it was private misbehavior." (*Senate Claiborne Hearings*, at 77, Statement of Judge Claiborne's counsel, Oscar Goodman). (See also Claiborne Motion, at 3)

Representative Kastenmeier responded by stating that "it would be absurd to conclude that a judge who had committed murder, mayhem, rape, or perhaps espionage in his private life, could not be removed from office by the U.S. Senate." (*Senate Claiborne Hearings*, at 81) Kastenmeier's response was repeated by the House of Representatives in its pleading opposing Claiborne's motion to dismiss. (*Opposition to Claiborne Motion* at 2)

The Senate did not vote on Judge Claiborne's motion, but it later voted to convict him. 132 Cong. Rec. S15,760–62 (daily ed. Oct. 9, 1986). The Senate thus agreed with the House that private improprieties could be, and were in this instance, impeachable offenses.

The Claiborne case makes clear that perjury, even if it relates to a matter wholly separated from a federal officer's official duties—a judge's personal tax returns—is an impeachable offense. Judge Nixon's false statements were also in regard to a matter distinct from his official duties. In short, the Senate's own precedents establish that misconduct need not be in one's official capacity to warrant removal.

CONCLUSION

This is a defining moment for the Presidency as an institution, because if the President is not convicted as a consequence of the conduct that has been portrayed, then no House of Representatives will ever be able to impeach again and no Senate will ever convict. The bar will be so high that only a convicted felon or a traitor will need to be concerned.

Experts pointed to the fact that the House refused to impeach President Nixon for lying on an income tax return. Can you imagine a future President, faced with possible impeachment, pointing to the perjuries, lies, obstructions, and tampering with witnesses by the current occupant of the office as not rising to the level of high crimes and misdemeanors? If this is not enough, what is? How far can the standard be lowered without completely compromising the credibility of the office for all time?

Dated: January 11, 1999.

THE UNITED STATES
HOUSE OF REPRESENTATIVES

HENRY J. HYDE,
F. JAMES SENSENBRENNER, Jr.,
BILL MCCOLLUM,
GEORGE W. GEKAS,
CHARLES T. CANADY,
STEPHEN E. BUYER,
ED BRYANT,
STEVE CHABOT,
BOB BARR,
ASA HUTCHINSON,
CHRIS CANNON,
JAMES E. ROGAN,
LINDSEY O. GRAHAM.
Managers on the Part of the House

APPENDIX

[In the Senate of the United States Sitting as a Court of Impeachment]

In re Impeachment of President William Jefferson Clinton

Appendix to Trial Memorandum of the Managers Appointed by the U.S. House of Representatives

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[Chart A]

THE PRESIDENT'S CONTACTS ALONE WITH LEWINSKY

LEWINSKY WHITE HOUSE EMPLOYEE (7/95–4/96)

1995

11/15/95 (Wed): The President meets alone twice with Lewinsky in Oval Office study and hallway outside the Oval Office. (Sexual Encounter)
11/17/95 (Fri): The President meets alone twice with Lewinsky in The President's private bathroom outside the Oval Office study. (Sexual Encounter)
12/5/95 (Tues): The President meets alone with Lewinsky in the Oval Office and study. (No Sexual Encounter)
12/31/95 (Sun): The President meets alone with Lewinsky in the Oval Office and Oval Office study. (Sexual Encounter)

1996

1/7/96 (Sun): The President meets alone with Lewinsky in the bathroom outside the Oval Office study. (Sexual Encounter)
1/21/96 (Sun): The President meets alone with Lewinsky in the hallway outside the Oval Office study. (Sexual Encounter)
2/4/96 (Sun): The President meets alone with Lewinsky in the Oval Office study and in the adjacent hallway. (Sexual Encounter)
2/19/96 (Mon): The President meets alone with Lewinsky in the Oval Office. (No Sexual Encounter)
3/31/96 (Sun): The President meets alone with Lewinsky in hallway outside the Oval Office. (Sexual Encounter)
4/7/96 (Sun): The President meets alone with Lewinsky in the hallway outside the Oval Office study and in the Oval Office study. (Sexual Encounter)

1997

2/28/97 (Fri): The President meets alone with Lewinsky in the Oval Office private bathroom. (Sexual Encounter)
3/29/97 (Sat): The President meets alone with Lewinsky in the Oval Office study. (Sexual Encounter)
5/24/97 (Sat): The President meets alone with Lewinsky in the Oval Office dining room, study and hallway. (No Sexual Encounter)
7/4/97 (Fri): The President meets alone with Lewinsky in the Oval Office study and hallway. (No Sexual Encounter)
7/14/97 (Mon): The President meets alone with Lewinsky in Heinreich's office. (No Sexual Encounter)
7/24/97 (Sat): The President meets alone with Lewinsky in the Oval Office study. (No Sexual Encounter)
8/16/97 (Sat): The President meets alone with Lewinsky in the Oval Office study. (Sexual Encounter)
10/11/97 (Sat): The President meets alone with Lewinsky in the Oval Office study. (No Sexual Encounter)
11/13/97 (Thurs): The President meets alone with Lewinsky in the Oval Office study. (No Sexual Encounter)
12/6/97 (Sat): The President meets alone with Lewinsky in the Oval Office study. (No Sexual Encounter)
12/28/97 (Sun): The President meets alone with Lewinsky in the Oval Office study. (No Sexual Encounter)

[Chart B]

THE PRESIDENT'S TELEPHONE CONTACTS WITH LEWINSKY

1/7/96 (Sun): Conversation—first call to ML's home.
1/7/96 (Sun): Conversation—ML at office.
1/15 or 1/16/96 (Mon or Tue): Conversation, approx. 12:30 a.m.—ML at home.*
Approx. 1/28/96 (Sun): Caller ID on ML's office phone indicated POTUS call.
1/30/96 (Tues): Conversation—during middle of workday at ML's office.
2/4/96 (Sun): Conversations—ML at office—multiple calls.
2/7 or 2/8/96 (Wed or Thur): Conversation—ML at home.
2/8 or 2/9/96 (Thur or Fri): Conversation—ML at home.*
2/19/96 (Mon): Conversation—ML at home.
Approx. 2/28 or 3/5/96: Conversation—approx. 20 min.—after chance meeting in hallway—ML at home.
3/26/96 (Tues): Conversation—approx. 11 a.m.—ML at office.
3/29/96: Conversation—ML at office—approx. 8 p.m.—invitation to movie.
3/31/96: Conversation—ML at office—approx. 1 p.m.—Pres. ill.
4/7/96 (Easter Sunday): Conversation——ML at home.
4/7/96 (Easter Sunday): Conversation—ML at home—why ML left.
4/12/96 (Fri): Conversation—ML at home—daytime.
4/12 or 4/13/96 (Fri or Sat): Conversation—ML at home—after midnight.
4/22/96 (Mon): Conversations—job talk—ML at home.
4/29 or 4/30/96 (Mon or Tues): Message—after 6:30 a.m.
5/2/96 (Thur): Conversation—ML at home.*
5/6/96 (Mon): Possible phone call.
5/16/96 (Thur): Conversation—ML at home.
5/21/96 (Tues): Conversation—ML at home.*
5/31/96 (Fri): Message.
6/5/96 (Wed): Conversation—ML at home—early evening.
6/23/96 (Sun): Conversation—ML at home.*
7/5 or 7/6/96 (Fri or Sat): Conversation—ML at home.*
7/19/96 (Fri): Conversation—6:30 a.m.—ML at home.*
7/28/96 (Sun): Conversation—ML at home.
8/4/96 (Sun): Conversation—ML at home.*
8/24/96 (Sat): Conversation—ML at home.*
9/5/96 (Thur): Conversation—Pres. In Fla—ML at home.*
9/10/96 (Tues): Message.
9/30/96 (Mon): Conversation.*
10/22/96 (Tues): Conversation—ML at home.*
10/23 or 10/24/96 (early am): Conversation—ML at home.
12/2/96 (Mon): Conversation—approx. 10–15 min.—ML at home.
12/2/96 (Mon): Conversation—later that evening—ML at home—approx. 10:30 p.m.—Pres fell asleep.*
12/18/96 (Wed): Conversation—approx. 5 min.—10:30 p.m.—ML at home.
12/30/96 (Mon): Message.
1/12/97 (Sun): Conversation—job talk—ML at home.*
2/8/97 (Sat): Conversation—ML at home—mid-day—11:30–12:00.
2/8/97 (Sat): Conversation—job talk—1:30 or 2:00 p.m.—ML at home.*
3/12/97 (Wed): Conversation—three minutes—ML at work.
4/26/97 (Sat): Conversation—late afternoon—20 min.—ML at home.
5/17/97 (Sat): Conversations—multiple calls.
5/18/97 (Sun): Conversations—multiple calls.
7/15/97 (Tues): Conversation—ML at home.
8/1/97 (Fri): Conversation.
9/30/97 (Tues): Conversation.*
10/9 or 10/10/97 (Thur or Fri): Conversation—long, from 2 or 2:30 a.m. until 3:30 or 4:00 a.m.—job talk—argument—ML at home.
10/23/97 (Thur): Conversation—ML at home—end b/c HRC.
10/30/97 (Thur): Conversation—ML at home—interview prep.
11/12/97 (Wed): Conversation—discuss re: ML visit.*
12/6/97 (Sat): Conversation—approx. 30 min—ML at home.
12/17 or 12/18/97 (Wed or Thur): Conversation—b/t 2:00 a.m. and 3:00 a.m.—ML at home—witness list.
1/5/98 (Mon): Conversation.

*Conversation that involved and may have involved phone sex.

[Chart C]

LEWINSKY GIFTS TO THE PRESIDENT

10/24/95: Lewinsky (before the sexual relationship began) gives her first gift to The President of a matted poem given by her and other White House interns to commemorate "National Boss' Day". It is the only gift the President sent to the archives instead of keeping.
11/20/95: Lewinsky gives The President a Zegna necktie.
3/31/96: Lewinsky gives The President a Hugo Boss Tie.
Christmas 1996: Lewinsky gives The President a Sherlock Homes game and a glow in the dark frog.
Before 8/16/96: Lewinsky gives The President a Zegna necktie and a t-shirt from Bosnia.
Early 1997: Lewinsky gives The President *Oy Ve,* a small golf book, golf balls, golf tees, and a plastic pocket frog.
3/97: Lewinsky gives The President a care package after he injured his leg including a metal magnet with The Presidential seal for his crutches, a license plate with "Bill" for his wheelchair, and knee pads with The Presidential seal.
3/29/97: Lewinsky gives The President her personal copy of *Vox,* a book about phone sex, a penny medallion with the heart cut out, a framed Valentine's Day ad, and a replacement for the Hugo Boss tie that had the bottom cut off.
5/24/97: Lewinsky gives The President a Banana Republic casual shirt and a puzzle on gold mysteries.
7/14/97: Lewinsky gives The President a wooden B, with a frog in it from Budapest.
Before 8/16/97: Lewinsky gives The President *The Notebook.*
8/16/97: Lewinsky gives The President an antique book on *Peter the Great,* the card game "Royalty", and a book, *Disease and Misrepresentation.*
10/21/97 or 10/22/97: Lewinsky gives The President a Calvin Klein tie, and pair of sunglasses.
10/97: Lewinsky gives The President a package Before filled with Halloween-related items, such as a Halloween pumpkin lapel pin, a wooden letter opener with a frog on the handle, and a plastic pumpkin filled with candy.
11/13/97: Lewinsky gives The President an antique paperweight that depicted the White House.
12/6/97: Lewinsky gives The President *Our Patriotic President: His Life in Pictures, Anecdotes, Sayings, Principles and Biography;* an antique standing cigar holder; a Starbucks Santa Monica mug; a Hugs and Kisses box; and a tie from London.
12/28/97: Lewinsky gives The President a hand-painted Easter Egg and "gummy boobs" from Urban Outfitters.
1/4/98: Lewinsky gives Currie a package with her final gift to The President containing a book entitled *The Presidents of the United States* and a love note inspired by the movie Titanic.

[Chart D]

THE PRESIDENT'S GIFTS TO LEWINSKY

12/5/95: The President gives Lewinsky an autographed photo of himself wearing the Zenga necktie she gave him.*
2/4/96: The President gives Lewinsky a signed "State of the Union" Address.*
3/31/96: The President gives Lewinsky cigars.
2/28/97: The President gives Lewinsky a hat pin*, "Davidoff" cigars, and the book the *Leaves of Grass* by Walt Whitman as belated Christmas gifts.
The President gives Lewinsky a gold brooch.*
The President gives Lewinsky an Annie Lennox compact disk.
The President gives Lewinsky a cigar.
7/24/97: The President gives Lewinsky an antique flower pin in a wooden box, a porcelain object d'art, and a signed photograph of the President and Lewinsky.*
Early 9/97: The President brings Lewinsky several Black Dog items, including a baseball cap*, 2 T-shirts*, a hat and a dress.*
12/28/97: The President gives Lewinsky the largest number of gifts including:
1. a large Rockettes blanket,*
2. a pin of the New York skyline,*
3. a marblelike bear's head from Vancouver,*
4. a pair of sunglasses,*
5. a small box of cherry chocolates,

6. a canvas bag from the Black Dog,*
7. a stuffed animal wearing a T-shirt from the Black Dog.*

(*Denotes those items Lewinsky produced to the OIC on 7/29/98).

JUL. -14' 98 (TUE) 14:02 RADER, CAMPBELL TEL:214 630 9996 P. 005

DEC. -05' 97 (FRI) 16:57 RADER, CAMPBELL TEL:214 630 9996 P. 001

TRANSACTION REPORT

Breakout
Transaction(s) completed

NO.	TX DATE/TIME	DESTINATION		DURATION	PGS.	RESULT	MODE
787	DEC. 5 16:40	202 393 5760		0° 03' 29"	019	OK	# ECM
	16:44	[redacted]		0° 03' 30"	019	OK	# ECM
	16:49	[redacted]		0° 04' 26"	019	OK	# ECM
	16:53	[redacted]		0° 04' 24"	019	OK	# ECM

RADER, CAMPBELL, FISHER & PYKE
(A PROFESSIONAL CORPORATION)
STEMMONS PLACE, SUITE 1080
2777 STEMMONS FREEWAY
DALLAS, TEXAS 75207

TELEPHONE (214) 630-4700
TELECOPY (214) 630-9996

TELECOPY TRANSMITTAL SHEET

DATE: December 5, 1997 TIME: 4:30 p.m. Central Standard Time

WE ARE TRANSMITTING: 19 PAGES (INCLUDING THIS COVER SHEET)

TO: Robert S. Bennett, Esq. TELECOPY NO. (202) 393-5760
Kathlyn Graves, Esq. TELECOPY NO. [redacted]
Stephen Engstrom, Esq. TELECOPY NO. [redacted]
Bill W. Bristow, Esq. TELECOPY NO. [redacted]

FROM ATTORNEY/SENDER: T. Wesley Holmes 1408-DC-00000005

COMMENTS:

Chart E

[Chart F]

LEWINSKY SUBPOENA

JONES V. CLINTON

DECEMBER 19, 1997

The Jones v. Clinton subpoena to Lewinsky called for:

(1) Her testimony on January 23, 1998 at 9:30 a.m.;
(2) Production of "each and every gift including but not limited to, any and all dresses, accessories, and jewelry, and/or hat pins given to you by, or on behalf of, Defendant Clinton;" and
(3) "Every document constituting or containing communications between you and Defendant Clinton, including letters, cards, notes, memoranda and all telephone records."

[Chart G]

DECEMBER 19, 1997

(Friday)

LEWINSKY IS SERVED WITH A SUBPOENA IN JONES V. CLINTON

1:47–1:48 p.m.: Lewinsky telephones Jordan's office.
3:00–4:00 p.m.: Lewinsky is served with a subpoena in *Jones* v. *Clinton.*
—: Lewinsky telephones Jordan immediately about subpoena.
3:51–3:52 p.m.: Jordan telephones The President and talks to Debra Schiff.
4:17–4:20 p.m.: Jordan telephones White House Social Office.
4:47 p.m.: Lewinsky meets Jordan and requests that Jordan notify The President about her subpoena.
5:01–5:05 p.m.: The President telephones Jordan; Jordan notifies The President about Lewinsky's subpoena.
5:06 p.m.: Jordan telephones attorney Carter to represent Lewinsky.
Later that Evening: The President meets alone with Jordan at the White House.

[Chart H]

DECEMBER 23, 1997

JONES V. CLINTON INTERROGATORY NO. 10

Interrogatory No. 10: Please state the name, address, and telephone number of each and every individual (other than Hillary Rodham Clinton) whom you had sexual relations when you held any of the following positions:

a. Attorney General of the State of Arkansas;
b. Governor of the State of Arkansas;
c. President of the United States.

(Court modifies scope to incidents from May 8, 1986 to the present involving state or federal employees.)

Supplemental Response to Interrogatory No. 10 (as modified by direction of the Court): None.

[Chart I]

DECEMBER 23, 1997

JONES V. CLINTON INTERROGATORY NO. 11

Interrogratory No. 11: Please state the name, address, and telephone number of each and every individual (other than Hillary Rodham Clinton) with whom you sought to have sexual relations, when you held any of the following positions:

a. Attorney General of the State of Arkansas;

b. Governor of the State of Arkansas;
c. President of the United States.

(Court modifies scope to incidents from May 8, 1986 to the present involving state or federal employees.)

Supplemental Response to Interrogatory No. 11 (as modified by direction of the Court): None.

[Chart J]

DECEMBER 28, 1997

(Sunday)

THE PRESIDENT'S FINAL MEETING WITH LEWINSKY AND THE CONCEALMENT OF THE GIFTS TO LEWINSKY

8:16 a.m.: Lewinsky meets The President at the White House at Currie's direction.

- The President gives Lewinsky numerous gifts.
- The President and Lewinsky discuss the subpoena, calling for, among other things, the hat pin. The President acknowledges "that sort of bothered [him] too."
- Lewinsky states to The President: "Maybe I should put the gifts away outside my house somewhere or give them to someone, maybe Betty [Currie]."

3:32 p.m.: Currie telephones Lewinsky at home from Currie's cell phone.

"I understand you have something to give me." or
"The President said you have something to give me."

Later that Day: Currie picks up gifts from Lewinsky.

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CUSTOMER ACCOUNT NO: 001423615-00001
MOBILE TELEPHONE NO: 202-395-1831

INVOICE NO: 0152183136
INVOICE DATE: JANUARY 01, 1998

USAGE DETAILS FOR 202 395-1831 ON ACTION 88PLAN 0938:
LONG DISTANCE SERVICE PROVIDED BY: BAM

PHONE USER NAME: . .

DATE	TIME	ORIG BAND	ORIGINATING LOCATION	CALLS TO	TELEPHONE NUMBER	AIRTIME RATE	AIRTIME MIN	AIRTIME AMOUNT	LANDLINE RATE	LANDLINE TYPE	LANDLINE AMOUNT	TOTAL CHARGES
12/11					*	*	*					
12/25	09:41 AM	1	WASHINGTON DC	WASHINGTON DC	[redacted]	OFFPK	1	0.10		LCL	0.10	0.20
12/27	09:42 AM	1	ARLINGTON VA	WASHINGTON DC	[redacted]	OFFPK	1	0.10		LCL	0.10	0.20
12/27	09:43 AM	1	ARLINGTON VA	WASHINGTON DC	[redacted]	OFFPK	1	0.10		LCL	0.10	0.20
12/27	11:35 AM	1	WASHINGTON DC	MOBILE CL	[redacted]	OFFPK	1	0.10				0.10
12/27	11:37 AM	1	WASHINGTON DC	INCOMING CL	[redacted]	OFFPK	2	0.20				0.20
12/28	03:32 PM	1	ARLINGTON VA	WASHINGTON DC	202 [redacted]	OFFPK	1	0.10		LCL	0.10	0.20
12/31	06:59 PM	1	WASHINGTON DC	ARLINGTON VA	[redacted]	PEAK	4	1.20		LCL	0.10	1.30
12/31	09:55 PM	1	ARLINGTON VA	INCOMING CL	[redacted]	OFFPK	1	0.10				0.10
12/31	09:56 PM	1	ARLINGTON VA	ARLINGTON VA	[redacted]	OFFPK	1	0.10		LCL	0.10	0.20
12/31	09:58 PM	1	ARLINGTON VA	INCOMING CL	[redacted]	OFFPK	2	0.20				0.20

TOTAL AIRTIME FOR 202 395-1831 ON ACTION 88PLAN 0938:
LONG DISTANCE SERVICE PROVIDED BY: BAM

PHONE USER NAME: . .

1070-DC-00000007

BAND 1 ALL W/B CELLS	CALLS	MINUTES USED	AIRTIME AMOUNT

Chart K

[Chart L]

THE PRESIDENT'S STATEMENTS ABOUT CONCEALING GIFTS

12/28/97

"[Lewinsky]: And then at some point I said to him [The President], 'Well, you know, should I—maybe I should put the gifts away outside my house somewhere or give them to someone, maybe Betty.' And he sort of said—I think he responded, 'I don't know' or 'Let me think about that.' And left that topic."—(Lewinsky Grand Jury 8/6/98 Tr. 152)

[Chart M]

AFFIDAVIT OF JANE DOE #

1. My name is Jane Doe # . I am 24 years old and I currently reside at 700 New Hampshire Avenue, NW., Washington, DC 20037.

2. On December 19, 1997, I was served with a subpoena from the plaintiff to give a deposition and to produce documents in the lawsuit filed by Paula Corbin Jones against President William Jefferson Clinton and Danny Ferguson.

3. I can not fathom any reason that the plaintiff would seek information from me for her case.

4. I have never met Ms. Jones, nor do I have any information regarding the events she alleges occurred at the Excelsior Hotel on May 8, 1991 or any other information concerning any of the allegations in her case.

5. I worked at the White House in the summer of 1995 as a White House intern. Beginning in December, 1995, I worked in the Office of Legislative Affairs as a staff assistant for correspondence. In April, 1996, I accepted a job as assistant to the Assistant Secretary for Public Affairs at the U.S. Department of Defense. I maintained that job until December 26, 1997. I am currently unemployed but seeking a new job.

6. In the course of my employment at the White House, I met President Clinton on several occasions. I do not recall ever being alone with the President, although it is possible that while working in the White House Office of Legislative Affairs I may have presented him with a letter for his signature while no one else was present. This would have lasted only a matter of minutes.

7. I have the utmost respect for the President who has always behaved appropriately in my presence.

8. I have never had a sexual relationship with the President, he did not propose that we have a sexual relationship, he did not offer me employment or other benefits in exchange for a sexual relationship, he did not deny me employment or other benefits for rejecting a sexual relationship. I do not know of any other person who had a sexual relationship with the President, was offered employment or other benefits in exchange for a sexual relationship, or was denied employment or other benefits for rejecting a sexual relationship. The occasions that I saw the President, with crowds of other people, after I left my employment at the White House in April, 1996 related to official receptions, formal functions or events related to the U.S. Department of Defense, where I was working at the time. There were other people present on all of these occasions.

9. Since I do not possess any information that could possibly be relevant to the allegations made by Paula Jones or lead to admissible evidence in this case, I asked my attorney to provide this affidavit to plaintiff's counsel. Requiring my deposition in this matter would cause unwarranted attorney's fees and costs, disruption of my life, especially since I am looking for employment, and constitute an invasion of my right to privacy.

I declare under the penalty of perjury that the foregoing is true and correct.

MONICA S. LEWINSKY.

DISTRICT OF COLUMBIA, ss:

Monica S. Lewinsky, being first duly sworn on oath according to law, deposes and says that she has read the foregoing Affidavit of Jane Doe # by her subscribed, that the matters stated herein are true to the best of her information, knowledge and belief.

Monica S. Lewinsky.

Subscribed and sworn to before me this _____ day of _____, 1998.

_____
NOTARY PUBLIC, D.C.

My Commission expires: _____

[Chart N]

FINAL AFFIDAVIT OF JANE DOE #6 [LEWINSKY]

1/7/98

8. I have never had a sexual relationship with the President, he did not propose that we have a sexual relationship, he did not offer me employment or other benefits in exchange for a sexual relationship, he did not deny me employment or other benefits for rejecting a sexual relationship. I do not know of any other person who had a sexual relationship with the President, was offered employment or other benefits in exchange for a sexual relationship, or was denied employment or other benefits for rejecting a sexual relationship. The occasions that I saw the President after I left my employment at the White House in April, 1996, were official receptions, formal functions or events related to the U.S. Department of Defense, where I was working at the time. There were other people present on those occasions.

[Chart O]

LEWINSKY'S AFFIDAVIT GETS FILED

(1/14/98–1/17/98)

JANUARY 14, 1998 (WEDNESDAY)

7:45 p.m.: Bennett's firm (Sexton) leaves Carter telephone message.
—: Carter faxes signed affidavit to Bennett's firm.

JANUARY 15, 1998 (THURSDAY)

9:17 a.m.: Sexton leaves Carter telephone message.
12:59 p.m.: Sexton leaves Carter telephone message.
—: Currie called by Newsweek.
—: Lewinsky drives Currie to meet Jordan.
—: Sexton telephones Carter: "STILL ON TIME?"
—: Carter telephones Court Clerk for Saturday (1/17/98) Filing of Affidavit and motion to quash.

JANUARY 16, 1998 (FRIDAY)

2 a.m. (Approx.): Carter completes motion to quash Lewinsky's deposition.
Carter sends by overnight mail motion to quash and affidavit to Bennett's firm and to the Court.
11:30 a.m.: Sexton message to Carter: "Please call."

JANUARY 17, 1998 (SATURDAY)

—: Lewinsky Affidavit is submitted to the Court.
—: The President is deposed.

[Chart P]

MISSION ACCOMPLISHED: LEWINSKY SIGNS AFFIDAVIT AND GETS A NEW YORK JOB

(1/5/98–1/9/98)

JANUARY 5, 1998

Lewinsky meets with attorney Carter for an hour; Carter drafts an Affidavit for Lewinsky in an attempt to avert her deposition testimony in *Jones* v. *Clinton* scheduled for January 23, 1998.
Lewinsky telephones Currie stating that she needs to speak to the President about an important matter; specifically that she was anxious about something she needed to sign—an Affidavit.
The President returns Lewinsky's call; Lewinsky mentions the Affidavit she'd be signing; Lewinsky offers to show the Affidavit to The President who states

that he doesn't need to see it because he has already seen about fifteen others.

JANUARY 6, 1998

11:32 a.m.: Carter pages Lewinsky: "Please call Frank Carter." Lewinsky meets Carter and receives draft Affidavit.
2:08–2:10 p.m.: Jordan calls Lewinsky. Lewinsky delivers draft Affidavit to Jordan.
3:14 p.m.: Carter again pages Lewinsky: "Frank Carter at [telephone number] will see you tomorrow morning at 10:00 in my office."
3:26–3:32 p.m.: Jordan telephones Carter.
3:38 p.m.: Jordan telephones Nancy Hernreich, Deputy Assistant to The President.
3:48 p.m.: Jordan telephones Lewinsky.
3:49 p.m.: Jordan telephones Lewinsky to discuss draft Affidavit. Both agree to delete implication that she had been alone with The President.
4:19–4:32 p.m.: The President telephones Jordan.
4:32 p.m.: Jordan telephones Carter.
4:34–4:37 p.m.: Jordan again telephones Carter.
5:15–5:19 p.m.: Jordan telephones White House.
9:26–9:29 a.m.: Jordan telephones Carter.
10:00 a.m.: Lewinsky signs false Affidavit at Carter's Office.
—: Lewinsky delivers signed Affidavit to Jordan.
11:58 a.m.–12:09 p.m.: Jordan telephones the White House.
5:46–5:56 p.m.: Jordan telephones the White House (Hernreich's Office).
6:50–6:54 p.m.: Jordan telephones the White House and tells The President that Lewinsky signed an Affidavit.

JANUARY 8, 1998

9:21 a.m.: Jordan telephones the White House Counsel's Office.
9:21 a.m.: Jordan telephones the White House.
—: Lewinsky interviews in New York at MacAndrews & Forbes Holdings, Inc. (MFH)
11:50–11:51 a.m.: Lewinsky telephones Jordan.
3:09–3:10 p.m.: Lewinsky telephones Jordan.
4:48–4:53 p.m.: Lewinsky telephones Jordan and advises that the New York MFH Interview went "Very Poorly."
4:54 p.m.: Jordan telephones Ronald Perelman in New York, CEO of Revlon (subsidiary of MFH) "to make things happen . . . if they could happen."
4:56 p.m.: Jordan telephones Lewinsky stating, "I'm doing the best I can to help you out."
6:39 p.m.: Jordan telephones White House Counsel's Office (Cheryl Mills), possibly about Lewinsky.
Evening: Revlon in New York telephones Lewinsky to set up a follow-up interview.
9:02–9:03 p.m.: Lewinsky telephones Jordan about Revlon interview in New York.

JANUARY 9, 1998

—: Lewinsky interviews in New York with Senior V.P. Seidman of MacAndrews & Forbes and two Revlon individuals.
Lewinsky offered Revlon job in New York and accepts.
1:29 p.m.: Lewinsky telephones Jordan.
4:14 p.m.: Lewinsky telephones Jordan to say that Revlon offered her a job in New York.
Jordan notifies Currie: "Mission Accomplished" and requests she tell The President.
Jordan notifies The President of Lewinsky's New York job offer. The President replies "Thank you very much."
4:37 p.m.: Lewinsky telephones Carter.
5:04 p.m.: Lewinsky telephones Jordan.
5:05 p.m.: Lewinsky telephones Currie.
5:08 p.m.: The President telephones Currie.
5:09–5:11 p.m.: Lewinsky telephones Jordan.
5:12 p.m.: Currie telephones The President.
5:18–5:20 p.m.: Jordan telephones Lewinsky.
5:21–5:26 p.m.: Lewinsky telephones Currie.

[Chart Q]

THE PRESIDENT'S INVOLVEMENT WITH LEWINSKY JOB SEARCH

"Q: Why are you trying to tell someone at the White House that this has happened [Carter had been fired]?
[Jordan]: Thought they had a right to know.
Q: Why?
[Jordan]: The President asked me to get Monica Lewinsky a job. I got her a lawyer. The Drudge Report is out and she has new counsel. I thought that was information that they ought to have. . . ." (Jordan Grand Jury 6/9/98 Tr. 45–46)
"Q: Why did you think the President needed to know that Frank Carter had been replaced?
[Jordan]: Information. He knew that I had gotten her a job, he knew that I had gotten her a lawyer. Information. He was interested in this matter. He is the source of it coming to my attention in the first place. . . ." (Jordan Grand Jury 6/9/98 Tr. 58–59)

[Chart R]

JORDAN'S PRE-WITNESS LIST JOB SEARCH EFFORTS

"[Jordan]: I have no recollection of an early November meeting with Ms. Monica Lewinsky. I have absolutely no recollection of it and I have no record of it." (Jordan Grand Jury 3/3/98 Tr. 50)

* * * * * * *

"Q: Is it fair to say that back in November getting Monica Lewinsky a job on any fast pace was not any priority of yours?
[Jordan]: I think that's fair to say." (Jordan Grand Jury 5/5/98 Tr. 76)

* * * * * * *

"[Lewinsky]: [Referring to 12/6/97 meeting with the President]. I think I said that . . . I was supposed to get in touch with Mr. Jordan the previous week and that things did not work out and that nothing had really happened yet [on the job front].
Q: Did the President say what he was going to do?
[Lewinsky]: I think he said he would—you know, this was not sort of typical of him, to sort of say, 'Oh, I'll talk to him. I'll get on it.'" (Lewinsky Grand Jury 8/6/98 Tr. 115–116)

* * * * * * *

"Q: But what is also clear is that as of this date, December 11th, you are clear that at that point you had made a decision that you would try to make some calls to help get her a job.
[Jordan]: There is no question about that." (Jordan Grand Jury 5/5/98 Tr. 95)

[Chart S]

JANUARY 17, 1998

SATURDAY

- 4:00 p.m. (approx): THE PRESIDENT finishes testifying under oath in *Jones v. Clinton, et al.*
- 5:19 p.m.: Jordan telephones White House.
- 5:38 p.m.: THE PRESIDENT telephones Jordan at home.
- 7:02 p.m.: THE PRESIDENT telephones Currie at home but does not speak with her.
- 7:02 p.m.: THE PRESIDENT places a call to Jordan's office.
- 7:13 p.m.: THE PRESIDENT telephones Currie at home and asks her to meet with him on Sunday.

JANUARY 18, 1998

SUNDAY

- 6:11 a.m.: Drudge Report Released.
- —: The President learns of the Drudge Report and [Tripp] tapes.

- 11:49 a.m.: Jordan telephones the White House.
- 12:30 p.m.: Jordan has lunch with Bruce Lindsey. Lindsey informs Jordan about the Drudge Report and [Tripp] tapes.
- 12:50 p.m.: THE PRESIDENT telephones Jordan at home.
- 1:11 p.m.: THE PRESIDENT telephones Currie at home.
- 2:15 p.m.: Jordan telephones the White House.
- 2:55 p.m.: Jordan telephones THE PRESIDENT.
- 5:00 p.m.: THE PRESIDENT meets with Currie, concerning his contacts with Lewinsky.
- 5:12 p.m.: Currie pages Lewinsky: "Please call Kay at home."
- 6:22 p.m.: Currie pages Lewinsky: "Please call Kay at home."
- 7:06 p.m.: Currie pages Lewinsky: "Please call Kay at home."
- 7:19 p.m.: Jordan telephones Cheryl Mills, White House Counsel's Office.
- 8:28 p.m.: Currie pages Lewinsky: "Call Kay."
- 10:09 p.m.: Lewinsky telephones Currie at home.
- 11:02 p.m.: THE PRESIDENT telephones Currie at home and asks if she reached Lewinsky.

JANUARY 19, 1998

MONDAY—MARTIN LUTHER KING DAY

- 7:02 a.m.: Currie pages Lewinsky: "Please call Kay at home at 8:00 this morning."
- 8:08 a.m.: Currie pages Lewinsky: "Please call Kay ."
- 8:33 a.m.: Currie pages Lewinsky: "Please call Kay at home."
- 8:37 a.m.: Currie pages Lewinsky: "Please call Kay at home. It's a social call. Thank you."
- 8:41 a.m.: Currie pages Lewinsky: "Kay is at home. Please call."
- 8:43 a.m.: Currie telephones The President from home to say she has been unable to reach Lewinsky.
- 8:44 a.m.: Currie pages Lewinsky: "Please call Kate re: family emergency."
- 8:50 a.m. THE PRESIDENT telephones Currie at home.
- 8:51 a.m.: Currie pages Lewinsky: "Msg. From Kay. Please call, have good news."
- 8:56 a.m.: THE PRESIDENT telephones Jordan at home.
- 10:29 a.m.: Jordan telephones the White House from his office.
- 10:35 a.m.: Jordan telephones Nancy Hernreich at the White House.
- 10:36 a.m.: Jordan pages Lewinsky: "Please call Mr. Jordan at [number redacted]."
- 10:44 a.m.: Jordan telephones Erskine Bowles at the White House.
- 10:53 a.m.: Jordan telephones Carter.
- 10:58 a.m.: THE PRESIDENT telephones Jordan at his office.
- 11:04 a.m.: Jordan telephones Bruce Lindsey at the White House.
- 11:16 a.m.: Jordan pages Lewinsky: "Please call Mr. Jordan at [number redacted]."
- 11:17 a.m.: Jordan telephones Lindsey at the White House.
- 12:31 p.m.: Jordan telephones the White House from a cellular phone.
- —: Jordan lunches with Carter.
- 1:45 p.m.: THE PRESIDENT telephones Currie at home.
- 2:29 p.m.: Jordan telephones the White House from a cellular phone.
- 2:44 p.m.: Jordan enters the White House and over the course of an hour meets with THE PRESIDENT, Erskine Bowles, Bruce Lindsay, Cheryl Mills, Charles Ruff, Rahm Emanuel and others.
- 2:46 p.m.: Carter pages Lewinsky: "Please call Frank Carter at [number redacted]."
- 4:51 p.m.: Jordan telephones Currie at home.
- 4:53 p.m.: Jordan telephones Carter at home.
- 4:54 p.m.: Jordan telephones Carter at his office. Carter informs Jordan that Lewinsky has replaced Carter with a new attorney.
- 4:58 p.m.: Jordan telephones Lindsey, White House Counsel's Office.
- 4:59 p.m.: Jordan telephones Mills, White House Counsel's Office.
- 5:00 p.m.: Jordan telephones Lindsey, White House Counsel's Office.
- 5:00 p.m.: Jordan telephones Ruff, White House Counsel's Office.
- 5:05 p.m.: Jordan telephones Lindsey, White House Counsel's Office.
- 5:05 p.m.: Jordan again telephones Lindsey, White House Counsel's Office.
- 5:05 p.m.: Jordan telephones the White House.
- 5:09 p.m.: Jordan telephones Mills, White House Counsel's Office.
- 5:14 p.m.: Jordan telephones Carter concerning his termination as Lewinsky's attorney.

- 5:22 p.m.: Jordan telephones Lindsey, White House Counsel's Office.
- 5:22 p.m.: Jordan telephones Mills, White House Counsel's Office.
- 5:55 p.m.: Jordan telephones Currie at home.
- 5:56 p.m.: THE PRESIDENT telephones Jordan at his office; Jordan informs The President that Carter was fired.
- 6:04 p.m.: Jordan telephones Currie at home.
- 6:26 p.m.: Jordan telephones Stephen Goodin, an aide to THE PRESIDENT.

[Chart T]

THE PRESIDENT'S POST-DEPOSITION STATEMENTS TO CURRIE

1/18/98

- "I was never really alone with Monica, right?"
- "You were always there when Monica was there, right?"
- "Monica came on to me, and I never touched her, right?"
- "You could see and hear everything, right?"
- "She wanted to have sex with me, and I cannot do that."—(Currie Grand Jury 7/22/98 Tr. 6–7; Currie Grand Jury 1/27/98 Tr. 70–75)

[Chart U]

THE PRESIDENT'S DENIALS

1/21/98

"And it was at that point that he gave his account of what had happened to me [sic] and he said that Monica—and it came very fast. He said, 'Monica Lewinsky came at me and made a sexual demand on me.' He rebuffed her. He said, 'I've gone down that road before, I've caused pain for a lot of people and I'm not going to do that again.'

She threatened him. She said that she would tell people they'd had an affair, that she was known as the stalker among her peers, and that she hated it and if she had an affair or said she had an affair then she wouldn't be the stalker any more."—(Blumenthal Grand Jury 6/4/98 Tr. 49)

"And he said, 'I feel like a character in a novel. I feel like somebody who is surrounded by an oppressive force that is creating a lie about me and I can't get the truth out. I feel like the character in the novel Darkness at Noon.'

And I said to him, I said, 'When this happened with Monica Lewinsky, were you alone? He said, 'Well, I was within eyesight or earshot of someone.' "—(Blumenthal Grand Jury 6/4/98 Tr. 50)

[Chart V]

"Q. Okay. Share that with us.

"A. Well, I think he said—he said that—there was some spate of, you know, what sex acts were counted, and he said that he had never had sex with her in any way whatsoever—

"Q. Okay.

"A. —that they had not had oral sex"—(John Podesta Grand Jury 6/16/98 Tr. 92)

* * * * * * *

"And I said, 'They're just too shocked by this. It's just too new, it's too raw.' And I said, 'And the problem is they're willing to forgive you [The President] for adultery, but not for perjury or obstruction of justice or the various other things.' "—(Dick Morris Grand Jury 8/18/98 Tr. 10, 12, 20)

* * * * * * *

"And I said, 'They're just not ready for it,' meaning the voters.' And he [The President] said, 'Well, we just have to win, then.' "—(Dick Morris Grand Jury 8/18/98 Tr. 30)

[Chart W]

"TALKING POINTS" *

January 24, 1998

* * * * * * *

"Q. Well, for example, Ms. Lewinsky is on tape indicating that the President does not believe oral sex is adultery. Would oral sex, to the President, constitute a sexual relationship?"

"A. Of course it would."

* * * * * * *

* Produced by the White House pursuant to OIC Subpoena.

[Chart X]

THE PRESIDENT CLAIMS HE WAS TRUTHFUL WITH AIDES

[President]: And so I said to them things that were true about this relationship. That I used—in the language I used, I said, there's nothing going on between us. That was true. I said, I have not had sex with her as I defined it. That was true. And did I hope that I would never have to be here on this day giving this testimony? Of course.

But I also didn't want to do anything to complicate this matter further. So I said things that were true. They may have been misleading, and if they were I have to take responsibility for it, and I'm sorry.—(The President Grand Jury 8/17/98 Tr. 106)

[Chart Y]

GRAND JURY WITNESSES

A person testifying before a federal grand jury has three options under the law:

(1) To obey the oath and testify to the truth, the whole truth and nothing but the truth;

(2) To lie;

(3) To assert the Fifth Amendment or another legally recognized privilege.

[Chart Z]

PRESIDENT'S STATEMENT GRAND JURY TESTIMONY

"When I was alone with Ms. Lewinsky on certain occasions in early 1996 and once in early 1997, I engaged in conduct that was wrong. These encounters did not consist of sexual intercourse. They did not constitute sexual relations as I understood that term to be defined at my January 17th, 1998 deposition. But they did involve inappropriate intimate contact.

These inappropriate encounters ended, at my insistence, in early 1997. I also had occasional telephone conversations with Ms. Lewinsky that included inappropriate sexual banter.

I regret that what began as a friendship came to include this conduct, and I take full responsibility for my actions.

While I will provide the grand jury whatever other information I can, because of privacy considerations affecting my family, myself, and others, and in an effort to preserve the dignity of the office I hold, this is all I will say about the specifics of these particular matters.

I will try to answer, to the best of my ability, other questions including questions about my relationship with Ms. Lewinsky; questions about my understanding of the term 'sexual relations', as I understood it to be defined at my January 17th, 1998 deposition; and questions concerning alleged subornation of perjury, obstruction of justice, and intimidation of witnesses. That, Mr. Bittman, is my statement."

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(2) Currie Cell phone records, 12/28/97
(3) Summary chart, 1/6/98
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(5) Summary chart, 1/15/98–1/16/98
(6) Summary chart, 1/17/98
(7) Summary chart, 1/18/98
(8) Summary chart, 1/19/98

Court Documents

(9) *Jones* v. *Clinton*. Jan. 29, 1998 District Court Order regarding discovery
(10) President Clinton's Answer to First Amended Complaint. *Jones* v. *Clinton*
(11) *In re: Sealed Case,* Nos. 98–3053 & 3059, U.S. Court of Appeals, District of Columbia
(12) Jane Doe #6 (Lewinsky) Affidavit filed in *Jones* v. *Clinton*
(13) "Sexual Relations" definition

Miscellaneous

(14) 1/18/98 Drudge Report
(15) *Jones'* attorneys fax cover sheet of witness list to Bennett
(16) White House "Talking Points," January 24, 1998
(17) LA Times 1/25/98 Article regarding White House "Talking Points"
(18) Response of William J. Clinton to Judiciary Committee Questions
(19) President Clinton Grand Jury Tr. 138 L. 16–23 (From GJ Tape 2)
(20) President Clinton Grand Jury Tr. 100 L. 20–25, Tr. 105 L. 19–25, Tr. 106 L. 1–12 (From GJ Tape 3)
(21) President Clinton Deposition Tr. 75 L. 2–8, Tr. 76 L. 24–25, Tr. 77 L. 1–2, (From Dep. Tape 1)
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(24) President Clinton Deposition Tr. 53 L. 22–25, Tr. 54 L. 1–7, 20–25, Tr. 55 L. 1–3 (From Dep. Tape 5)
(25) President Clinton Deposition Tr. 204 L. 5–14, (From Dep. Tape 8)
(26) President Clinton Grand Jury Tr. 9–11

[EXHIBIT 1]

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Telephone Calls

TABLE 31

December 19, 1997

No.	Time	Call From	Call To	Length of Call
1	1:47 PM	Ms. Lewinsky's office, [redacted]	Mr. Jordan's office, [redacted]	1:50
2	3:51 PM	Mr. Jordan's office, [redacted]	President Clinton; talked with Debra Schiff	1:00
3	4:17 PM	Mr. Jordan's office, [redacted]	White House Social Office, [redacted]	2:42
4	5:01 PM	President Clinton	Mr. Jordan's office, [redacted]	4:30 *
5	5:06 PM	Mr. Jordan's office [redacted]	Francis Carter's office, [redacted]	1:54

Source Documents

Call 1: 833-DC-00017890 (Pentagon phone records)

Call 2: 1178-DC-00000013 (Presidential call log); V004-DC-00000151 (Akin, Gump, Strauss, Hauer & Feld phone record)

Calls 3 and 5: V004-DC-00000151 (Akin, Gump, Strauss, Hauer & Feld phone record)

Call 4: 1178-DC-00000014 (Presidential call log); V004-DC-00000151 (Akin, Gump, Strauss, Hauer & Feld phone record)

* Presidential call logs indicate that President Clinton placed a call to Mr. Jordan at 4:57 PM and that they talked from 5:01 PM to 5:06 PM. The best interpretation of the evidence suggests that the call did not end at 5:06 PM. The Presidential call logs are maintained by hand, whereas the automated Akin, Gump, Strauss, Hauer & Feld phone records reflect that the conversation actually ended at 5:05 PM.

[EXHIBIT 2]

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CUSTOMER ACCOUNT NO: 001423615-00001
MOBILE TELEPHONE NO: 202-395-1831

INVOICE NO: 0152183136
INVOICE DATE: JANUARY 01, 1990

USAGE DETAILS FOR 202 395-1831 ON ACTION 88PLAN 0938:
LONG DISTANCE SERVICE PROVIDED BY: BAM

PHONE USER NAME: . .

DATE	TIME	ORIG BAND	ORIGINATING LOCATION	CALLS TO	TELEPHONE NUMBER	AIRTIME RATE	AIRTIME MIN	AIRTIME AMOUNT	LANDLINE RATE	LANDLINE TYPE	LANDLINE AMOUNT	TOTAL CHARGES
12/11					*	*	*					
12/25	09:41 AM	1	WASHINGTON DC	WASHINGTON DC	[redacted]	OFFPK	1	0.10		LCL	0.10	0.20
12/27	09:42 AM	1	ARLINGTON VA	WASHINGTON DC	[redacted]	OFFPK	1	0.10		LCL	0.10	0.20
12/27	09:43 AM	1	ARLINGTON VA	WASHINGTON DC	[redacted]	OFFPK	1	0.10		LCL	0.10	0.20
12/27	11:35 AM	1	WASHINGTON DC	MOBILE CL	[redacted]	OFFPK	1	0.10				0.10
12/27	11:37 AM	1	WASHINGTON DC	INCOMING CL	[redacted]	OFFPK	2	0.20				0.20
12/28	03:32 PM	1	ARLINGTON VA	WASHINGTON DC	202 [redacted]	OFFPK	1	0.10		LCL	0.10	0.20
12/31	06:59 PM	1	WASHINGTON DC	ARLINGTON VA	[redacted]	PEAK	4	1.20		LCL	0.10	1.30
12/31	09:55 PM	1	ARLINGTON VA	INCOMING CL	[redacted]	OFFPK	1	0.10				0.10
12/31	09:56 PM	1	ARLINGTON VA	ARLINGTON VA	[redacted]	OFFPK	1	0.10		LCL	0.10	0.20
12/31	09:58 PM	1	ARLINGTON VA	INCOMING CL	[redacted]	OFFPK	2	0.20				0.20

TOTAL AIRTIME FOR 202 395-1831 ON ACTION 88PLAN 0938:
LONG DISTANCE SERVICE PROVIDED BY: BAM

PHONE USER NAME: . .

1070-DC-00000007

BAND 1 ALL W/B CELLS	CALLS	MINUTES USED	AIRTIME AMOUNT

THE WHITE HOUSE

WASHINGTON

PRESIDENTIAL CALL LOG

DECEMBER 27, 19 97

	TIME PLACED	DISC	NAME	ACTION

REDACTED

V006-DC-00002063

OUT	AM	11:33	MS. BETTY W. CURRIE CELLULAR PHONE 202-395-1831	TLKD-OK 11:29 A.M.
IN	11:27			

MCI

MARCIA LEWIS
Acct 202 965 6353 340 55 May 4 1996

Long Distance continued
Calls from 202-965-6355:

Amount	Place	Number	Date	Time	Rate	Min
$ .81	FF W ANGEL CA	[redacted]	Apr 3	8:03P	*E	7
.11	SAN FRAN CA	[redacted]	6	12:49P	*N	1
.11	PORTLAND OR	[redacted]	6	3:42P	*N	1
.11	SAN FRAN CA	[redacted]	6	6:41P	*N	1
.11	PORTLAND OR	[redacted]	6	6:42P	*N	1
.11	SAN FRAN CA	[redacted]	6	9:10P	*N	1
2.33	FF W ANGEL CA	[redacted]	7	5:08P	*E	20
1.67	THE PLAI VA	[redacted]	7	9:16P	*E	14
.47	THE PLAI VA	[redacted]	7	9:49P	*E	4
.12	BEVERLYH CA	[redacted]	7	9:58P	*E	1
.12	BEVERLYH CA	[redacted]	7	9:58P	*E	1
3.09	KIHEI HI	[redacted]	7	9:59P	*E	18
.16	KIHEI HI	[redacted]	7	10:17P	*E	1
1.54	KIHEI HI	[redacted]	7	10:18P	*E	9

1000-DC-00000767 Page 30

MCI

MARCIA LEWIS
Acct 202 965 6353 340 55 May 4 1996

Long Distance continued
Calls from 202-965-6355:

Amount	Place	Number	Date	Time	Rate	Min
$ 1.00	THE PLAI VA	[redacted]	Apr 8	4:53P	*D	5
.12	PORTLAND OR	[redacted]	8	5:01P	*E	1
.12	PORTLAND OR	[redacted]	8	5:01P	*E	1
.12	CANBY OR	[redacted]	8	5:02P	*E	1
2.01	PORTLAND OR	[redacted]	8	5:03P	*E	15
.12	PORTLAND OR	[redacted]	8	5:48P	*E	1
.12	SAN FRAN CA	[redacted]	8	8:24P	*E	1
.12	PORTLAND OR	[redacted]	8	8:30P	*E	1
1.96	FF W ANGEL CA	[redacted]	8	9:43P	*E	17
1.61	PORTLAND OR	[redacted]	8	10:00P	*E	12
3.09	SAN FRAN CA	[redacted]	8	10:12P	*E	23
.63	DIN ASST NY	[redacted]	9	2:17P	*D	1
3.45	FF NEW YORK NY	[redacted]	9	2:18P	*D	19
.20	NEW YORK NY	[redacted]	9	4:36P	*D	1

1000-DC-00000768 Page 31

[EXHIBIT 3]

161

Telephone Calls

TABLE 35

January 6, 1998

No.	Time	Call from	Call to	Length of call
1	11:32 AM	Mr. Carter	Ms. Lewinsky's pager; message reads: "PLEASE CALL FRANK CARTER @ [redacted]"	N/A
2	2:08 PM	Mr. Jordan's office, [redacted]	Ms. Lewinsky's residence, [redacted]	1:48
3	3:14 PM	Mr. Carter	Ms. Lewinsky's pager; message reads: "FRANK CARTER AT [redacted]. I WILL SEE YOU TOMORROW MORNING AT 10:00 IN MY OFFICE."	N/A
4	3:26 PM	Mr. Jordan's office, [redacted]	Mr. Carter, [redacted]	6:42
5	3:38 PM	Mr. Jordan's office, [redacted]	Ms. Hernreich, White House, [redacted]	2:12
6	3:48 PM	Mr. Jordan's office, [redacted]	Ms. Lewinsky's residence, [redacted]	0:24
7	3:49 PM	Mr. Jordan's office, [redacted]	Ms. Lewinsky at Ms. Finerman's residence, [redacted]	5:54
8	4:19 PM	President Clinton	Mr. Jordan's office, [redacted]	13:00
9	4:32 PM	Mr. Jordan's office, [redacted]	Mr. Carter, [redacted]	1:06
10	4:34 PM	Mr. Jordan's office, [redacted]	Mr. Carter, [redacted]	2:30
11	5:15 PM	Mr. Jordan's office, [redacted]	White House, [redacted]	4:06

Source Documents

Calls 1 and 3: 831-DC-00000010 (Pagemart; all times have been adjusted from Pacific to Eastern Standard Time)

Calls 2, 4, 5, 6, 7, 9, 10, and 11: V004-DC-00000158 (Akin, Gump, Strauss, Hauer & Feld call log)

Call 8: 1178-DC-00000016 (Presidential call log)

[EXHIBIT 4]

162

Telephone Calls

TABLE 36

January 7, 1998

No.	Time	Call from	Call to	Length of call
1	9:26 AM	Mr. Jordan's office, [redacted]	Mr. Carter, [redacted]	3:30
2	11:58 AM	Mr. Jordan's office, [redacted]	White House, [redacted]	11:30
3	5:46 PM	Mr. Jordan's office, [redacted]	Ms. Hamwick, White House, [redacted]	10:48
4	6:50 PM	Mr. Jordan's limousine, [redacted]	White House, [redacted]	4:00

Source Documents

Call 1: V004-DC-00000158 (Akin, Gump, Strauss, Hauer & Feld call logs)

Call 2 and 3: V004-DC-00000159 (Akin, Gump, Strauss, Hauer & Feld call logs)

Call 4: 1033-DC-00000115 (Bell Atlantic Mobile toll records)

[EXHIBIT 5]

171

Telephone Calls

TABLE 44

January 15, 1998

No.	Time	Call from	Call to	Length of call
1	unknown	Mr. Jordan at St. Regis Hotel, New York, NY	White House, [redacted]	unknown
2	unknown	Ms. Currie's office, [redacted]	Vernon Jordan's office; message reads: "Betty- POTUS, [redacted] KIND OF IMPORTANT"	N/A
3	10:22 AM	Mr. Carter	Ms. Lewinsky's pager; message reads: "PLEASE CALL FRANCIS CARTER @ [redacted]	N/A
4	12:31 PM	Ms. Currie	Ms. Lewinsky's pager; message reads: "PLEASE CALL KAY."	N/A
5	1:08 PM	Mr. Carter	Ms. Lewinsky's pager; message reads: "PLEASE CALL FRANK CARTER AT [redacted]	N/A
6	3:02 PM	Mr. Jordan's office, [redacted]	Ms. Hertreich, White House, [redacted]	1:30
7	3:04 PM	Mr. Jordan's office, [redacted]	White House, [redacted]	1:54
8	5:16 PM	Mr. Jordan's office, [redacted]	White House, [redacted]	2:48
9	5:22 PM	Ms. Currie	Ms. Lewinsky's pager; message reads: "PLEASE CALL KAY ASAP."	N/A
10	6:45 PM	Mr. Jordan's office, [redacted]	Ms. Currie's residence, [redacted]	0:12

Source Documents

Call 1: 1065-DC-00000006 (St. Regis Hotel receipt)

Call 2: V005-DC-00000058 (Vernon Jordan's message log)

Calls 3, 4, 5 and 9: 831-DC-00000008 (Pagemart)

Calls 6, 7, 8 and 10: V004-DC-00000164 (Akin, Gump, Strauss, Hauer & Feld call logs)

TABLE 45

January 16, 1998

No.	Time	Call from	Call to	Length of call
1	11:17 AM	Mr. Jordan's office, [redacted]	Ms Currie, White House, [redacted]	1:24
2	9:41 PM	Mr. Jordan's residence, [redacted]	President Clinton	5:00

Source Documents

Call 1: V004-DC-00000164 (Akin, Gump, Strauss, Hauer & Feld call logs)

Call 2: 1178-DC-00000018 (Presidential call log)

[EXHIBIT 6]

173

Telephone Calls

TABLE 46

January 17, 1998

No.	Time	Call from	Call to	Length of call
1	5:19 PM	Mr. Jordan's mobile phone, [redacted]	White House, [redacted]	1:00
2	5:38 PM	President Clinton	Mr. Jordan's residence, [redacted]	2:00
3	7:02 PM	President Clinton	Mr. Jordan's office, [redacted]	2:00
4	7:13 PM	President Clinton	Ms. Currie's residence, [redacted]	1:00

Source Documents

Call 1. 1033-DC-00000033 (Bell Atlantic Mobile toll records)

Call 2. 1178-DC-00000019 (Presidential call log)

Call 3. 1178-DC-00000020 (Presidential call log)

Call 4. V006-DC-00002066 (Presidential call log)

[EXHIBIT 7]

174

Telephone Calls

TABLE 47

January 18, 1998

No.	Time	Call From	Call To	Length of Call
1	11:49 AM	Mr. Jordan's office, [redacted]	White House, [redacted]	1:12
2	12:50 PM	President Clinton	Mr. Jordan's residence, [redacted]	2:00
3	1:11 PM	President Clinton	Ms. Currie's residence, [redacted]	3:00
4	2:15 PM	Mr. Jordan's mobile phone, [redacted]	White House, [redacted]	4:00
5	2:55 PM	Mr. Jordan's residence, [redacted]	President Clinton "hold per PRESUS, 9:20 PM"	N/A
6	5:12 PM	Ms. Currie	Ms. Lewinsky's pager; message reads: "PLEASE CALL KAY AT HOME."	N/A
7	6:22 PM	Ms. Currie	Ms. Lewinsky's pager; message reads: "PLEASE CALL KAY AT HOME."	N/A
8	7:06 PM	Ms. Currie	Ms. Lewinsky's pager; message reads "PLEASE CALL KAY AT HOME."	N/A
9	7:19 PM	Mr. Jordan's office [redacted]	Cheryl Mills, White House Counsel's Office, [redacted]	1:06
10	8:28 PM	Ms. Currie	Ms. Lewinsky's pager; message reads: "CALL KAY"	N/A
11	11:02 PM	President Clinton	Ms. Currie's residence, [redacted]	1:00

Source Documents

Calls 1 and 9:	V004-DC-00000165 (Akin, Gump, Strauss, Hauer & Feld call logs)
Call 2:	1178-DC-00000021 (Presidential call log)
Call 3:	V006-DC-00002067 (Presidential call log)
Call 4:	1033-DC-00000034 (Bell Atlantic Mobile toll records)
Call 5:	1248-DC-00000312 (Presidential call log)
Calls 6, 7, 8, and 10:	831-DC-00000008 (Pagemart)

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TABLE 47 continued

Call 11 V006-DC-00007068 (Presidential call log)

[EXHIBIT 8]

176

Telephone Calls

TABLE 48

January 19, 1998

No.	Time	Call From	Call To	Length of Call
1	7:02 AM	Ms. Currie	Ms. Lewinsky's pager; message reads: "PLEASE CALL KAY AT HOME AT 8:00 THIS MORNING."	N/A
2	8:08 AM	Ms. Currie	Ms. Lewinsky's pager; message reads: "PLEASE CALL KAY."	N/A
3	8:33 AM	Ms. Currie	Ms. Lewinsky's pager; message reads: "PLEASE CALL KAY AT HOME."	N/A
4	8:37 AM	Ms. Currie	Ms. Lewinsky's pager; message reads: "PLEASE CALL KAY AT HOME. IT'S A SOCIAL CALL. THANK YOU"	N/A
5	8:41 AM	Ms. Currie	Ms. Lewinsky's pager; message reads: "KAY IS AT HOME. PLEASE CALL."	N/A
6	8:43 AM	Ms. Currie's residence, [redacted]	President Clinton	1:00
7	8:44 AM	Ms. Currie	Ms. Lewinsky's pager; message reads: "PLEASE CALL KATE RE: FAMILY EMERGENCY."	N/A
8	8:50 AM	President Clinton	Ms. Currie's residence, [redacted]	1:00
9	8:51 AM	Ms. Currie	Ms. Lewinsky's pager; message reads: "MSG. FROM KAY. PLEASE CALL. HAVE GOOD NEWS."	N/A
10	8:56 AM	President Clinton	Mr. Jordan's residence, [redacted]	9:00
11	10:29 AM	Mr. Jordan's office, [redacted]	White House, [redacted]	3:42
12	10:36 AM	Mr. Jordan's office, [redacted]	Ms. Lewinsky's pager; message reads: "PLEASE CALL MR. JORDAN AT [redacted]	N/A
13	10:35 AM	Mr. Jordan's office, [redacted]	Nancy Hernreich, White House, [redacted]	1:12
14	10:44 AM	Mr. Jordan's office, [redacted]	Erskine Bowles, White House, [redacted]	1:00

TABLE 48 continued

No.	Time	Call From	Call To	Length of Call
15	10:53 AM	Mr. Jordan's office, [redacted]	Frank Carter's office, [redacted]	0:36
16	10:58 AM	President Clinton	Mr. Jordan's office, [redacted]	1:00
17	11:04 AM	Mr. Jordan's office, [redacted]	Bruce Lindsey, White House [redacted]	0:24
18	11:16 AM	Mr. Jordan	Ms. Lewinsky's pager, message reads: "PLEASE CALL MR. JORDAN AT [redacted]"	0:36
19	11:17 AM	Mr. Jordan's office, [redacted]	Bruce Lindsey, White House, [redacted]	1:36
20	12:31 PM	Mr. Jordan's mobile phone, [redacted]	White House, [redacted]	3:00
21	1:45 PM	President Clinton	Ms. Currie's residence, [redacted]	2:00
22	2:29 PM	Mr. Jordan's mobile phone, [redacted]	White House, [redacted]	2:00
23	2:46 PM	Frank Carter	Ms. Lewinsky's pager, message reads: "PLEASE CALL FRANK CARTER AT [redacted]"	N/A
24	4:51 PM	Mr. Jordan's office [redacted]	Ms. Currie's residence, [redacted]	1:42
25	4:53 PM	Mr. Jordan's office [redacted]	Frank Carter's residence, [redacted]	0:24
26	4:54 PM	Mr. Jordan's office, [redacted]	Frank Carter's office, [redacted]	4:00
27	4:58 PM	Mr. Jordan's office, [redacted]	Bruce Lindsey, White House, [redacted]	0:12
28	4:59 PM	Mr. Jordan's office, [redacted]	Cheryl Mills, White House Counsel's office, [redacted]	0:42
29	5:00 PM	Mr. Jordan's office, [redacted]	Bruce Lindsey, White House, [redacted]	0:18
30	5:00 PM	Mr. Jordan's office, [redacted]	Charles Ruff, White House Counsel, [redacted]	0:24
31	5:05 PM	Mr. Jordan's office, [redacted]	Bruce Lindsey, White House, [redacted]	0:06

TABLE 48 continued

No.	Time	Call From	Call To	Length of Call
32	5:05 PM	Mr. Jordan's office, [redacted]	Bruce Lindsey, White House, [redacted]	0:18
33	5:05 PM	Mr. Jordan's office, [redacted]	White House, [redacted]	2:12
34	5:09 PM	Mr. Jordan's office, [redacted]	Cheryl Mills, White House Counsel's office, [redacted]	1:06
35	5:14 PM	Mr. Jordan's office, [redacted]	Frank Carter's office, [redacted]	8:24
36	5:22 PM	Mr. Jordan's office, [redacted]	Bruce Lindsey, White House, [redacted]	0:06
37	5:22 PM	Mr. Jordan's office, [redacted]	Cheryl Mills, White House Counsel's office, [redacted]	0:18
38	5:55 PM	Mr. Jordan's office, [redacted]	Ms. Currie's residence, [redacted]	0:24
39	5:56 PM	President Clinton	Mr. Jordan's office, [redacted]	7:00
40	6:04 PM	Mr. Jordan's office, [redacted]	Ms. Currie's residence, [redacted]	3:00
41	6:26 PM	Mr. Jordan's office, [redacted]	Stephen Goodin, White House, [redacted]	0:42

Source Documents

Calls 1, 2, 3, 4, 5, 7, 9, 12, 18, and 23:	831-DC-00000009 (Pagemart)
Calls 6 and 8:	V006-DC-00002069 (Presidential call log)
Call 10:	1178-DC-00000023 (Presidential call log)
Calls 11, 12, 13, 14, 15, 17, 19, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, and 37:	V004-DC-00000165 (Akin, Gump, Strauss, Hauer & Feld call log)
Call 16, 39:	1248-DC-00000319 (Presidential call log)
Calls 20 and 22:	1033-DC-00000035 (Bell Atlantic Mobile toll records)

[EXHIBIT 9]

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS
JAN 29 1998
JAMES W. McCORMACK, CLERK
By: DEP CLERK

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

PAULA CORBIN JONES,	*	
	*	
Plaintiff,	*	
	*	
	*	
vs.	*	No. LR-C-94-290
	*	
	*	
	*	
WILLIAM JEFFERSON CLINTON and DANNY FERGUSON,	*	
	*	
	*	
Defendants.	*	

ORDER

Before the Court is a motion by the United States, through the Office of the Independent Counsel ("OIC"), for limited intervention and a stay of discovery in the case of *Jones v. Clinton*, No. LR-C-94-290 (E.D.Ark.). The Court held a telephone conference on this motion on the morning of January 29, 1998, during which the views of counsel for the plaintiff, counsel for the defendants, and the OIC were expressed. Having considered the matter, the Court hereby grants in part and denies in part OIC's motion.

In seeking limited intervention and a stay of discovery, OIC states that counsel for the plaintiff, in a deliberate and calculated manner, are shadowing the grand jury's investigation of the Monica Lewinsky matter. Motion of OIC, at 2. OIC states that "the pending criminal investigation is of such gravity and paramount importance that this Court would do a disservice to the Nation if it were to permit the unfettered – and extraordinarily aggressive – discovery

efforts currently underway to proceed unabated." *Id.* at 3.[1] OIC's motion comes with less than 48 hours left in the period for conducting discovery, the cutoff date being January 30, 1998. Given the timing of OIC's motion and the possible impact that this motion could have on the proceedings in this matter, the Court is required to rule at this time on the admissibility at trial of evidence concerning Monica Lewinsky.

Rule 403 of the Federal Rules of Evidence provides that evidence, although relevant, "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." This weighing process compels the conclusion that evidence concerning Monica Lewinsky should be excluded from the trial of this matter.

The Court acknowledges that evidence concerning Monica Lewinsky might be relevant to the issues in this case. This Court would await resolution of the criminal investigation currently underway if the Lewinsky evidence were essential to the plaintiff's case. The Court determines, however, that it is not essential to the core issues in this case. In fact, some of this evidence might even be inadmissable as extrinsic evidence under Rule 608(b) of the Federal Rules of Evidence. Admitting <u>any</u> evidence of the Lewinsky matter would frustrate the timely resolution of this case and would undoubtedly cause undue expense and delay.

This Court's ruling today does not preclude admission of any other evidence of alleged improper conduct occurring in the White House.

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[1] For the record, counsel for the plaintiff take great issue with OIC's characterization of their discovery efforts.

In addition, and perhaps more importantly, the substantial interests of the Presidency militate against any undue delay in this matter that would be occasioned by allowing plaintiff to pursue the Monica Lewinsky matter. Under the Supreme Court's ruling in *Clinton v. Jones*, 117 S.Ct. 1636, 1651 (1997), "[t]he high respect that is owed to the Office of the Chief Executive ... is a matter that should inform the conduct of the entire proceeding, including the timing and scope of discovery." There can be no doubt that a speedy resolution of this case is in everyone's best interests, including that of the Office of the President, and the Court will therefore direct that the case stay on course.

One final basis for the Court's ruling is the integrity of the criminal investigation. This Court must consider the fact that the government's proceedings could be impaired and prejudiced were the Court to permit inquiry into the Lewinsky matter by the parties in this civil case. *See, e.g., Arden Way Associates v. Ivan F. Boesky*, 660 F.Supp. 1494 (S.D.N.Y. 1987). In that regard, it would not be proper for this Court, given that it must generally yield to the interests of an ongoing grand jury investigation, to give counsel for the plaintiff or the defendants access to witnesses' statements in the government's criminal investigation. *See* Fed.R.Crim.P. 16(a)(2), which generally prohibits the discovery of government witnesses. That being so, and because this case can in any event proceed without evidence concerning Monica Lewinsky, the Court will exclude evidence concerning her from the trial of this matter.

In sum, the plaintiff and defendants may not continue with discovery of those matters that concern Monica Lewinsky. In that regard, OIC's motion for limited intervention and stay of discovery is granted. Further, any evidence concerning Ms. Lewinsky shall be excluded

from the trial of this matter. With respect to matters that do not involve Monica Lewinsky, OIC's motion is denied and the parties may continue with discovery. Because the telephone conference underlying today's ruling involved a discussion of discovery matters, the transcript of the conference shall remain under seal in accordance with the Court's Confidentiality Order on Consent of all Parties.

IT IS SO ORDERED this 29th day of January 1998.

UNITED STATES DISTRICT JUDGE

THIS DOCUMENT ENTERED ON DOCKET SHEET IN COMPLIANCE WITH RULE 58 AND/OR 79(a) FRCP ON 1/29/98 BY

[EXHIBIT 10]

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS
DEC 17 1997
JAMES W. McCORMACK, CLERK
By: DEP CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

PAULA CORBIN JONES, Plaintiff,	:	CIVIL ACTION NO. LR-C-94-290
v.	:	Judge Susan Webber Wright
WILLIAM JEFFERSON CLINTON and DANNY FERGUSON, Defendants.	:	(JURY TRIAL DEMANDED)

ANSWER OF PRESIDENT WILLIAM JEFFERSON CLINTON TO THE FIRST AMENDED COMPLAINT

President William Jefferson Clinton, through his undersigned attorneys, answers the First Amended Complaint ("Amended Complaint") in the above-captioned matter as follows:

GENERAL DENIAL

The President adamantly denies the false allegations advanced in the Amended Complaint. Specifically, at no time did the President make sexual advances toward the plaintiff, or otherwise act improperly in her presence. At no time did the President threaten or intimidate the plaintiff. At no time did the President conspire to or sexually harass the plaintiff. At no time did the President conspire to or deprive the plaintiff of her constitutional rights. And at no time did the President act in a manner intended to, or which could, inflict emotional distress upon the plaintiff.

As Governor of Arkansas, Mr. Clinton never took any action or made any request of any state employee to interfere with or otherwise detract from plaintiff's advancement, promotion or job responsibilities. President Clinton also adamantly denies plaintiff's baseless allegations that he engaged in any pattern or practice of granting governmental or employment benefits to women in exchange for sexual favors. Such allegations are false, and have no relevance whatsoever to Plaintiff's claims concerning her alleged encounter with Governor Clinton. Plaintiff's Amended Complaint thus is simply a groundless attempt by Paula Jones and those who are financially supporting her to use the judicial system improperly to try to humiliate and embarrass the President.

SPECIFIC DENIALS

JURISDICTION

1. Paragraph 1 of the Amended Complaint states legal conclusions as to which no response is required.

VENUE

2. Paragraph 2 of the Amended Complaint states legal conclusions as to which no response is required.

THE PARTIES

3. President Clinton is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 3, and therefore denies the same.

4. President Clinton admits he is a resident of Arkansas.

5. President Clinton is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 5, and therefore denies the same.

FACTS

6. President Clinton admits that the Governor of Arkansas serves in the executive branch. Based on information and belief, he also admits that at some point in time plaintiff was an employee of the Arkansas Industrial Development Commission. President Clinton is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 6, and therefore denies the same.

7. Admitted.

8. President Clinton is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 8, and therefore denies the same.

9. Based on information and belief, President Clinton admits that Danny Ferguson was a state trooper assigned to the Governor's security detail on or about May 8, 1991. He is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 9, and therefore denies the same.

10. President Clinton denies the allegations set forth in paragraph 10 to the extent they purport to allege that he requested to meet plaintiff in a suite at the Excelsior Hotel. He is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 10, and therefore denies the same.

11. President Clinton is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 11, and therefore denies the same.

12. President Clinton is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 12, and therefore denies the same.

13. President Clinton is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 13, and therefore denies the same.

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14. President Clinton does not recall ever meeting plaintiff, and therefore denies each and every allegation set forth in paragraph 14.

15. While it was the usual practice to have a business suite available for the purpose of making calls and receiving visitors, President Clinton has no recollection of meeting plaintiff, and therefore denies each and every allegation set forth in paragraph 15.

16. President Clinton does not recall ever meeting plaintiff, and therefore denies each and every allegation set forth in paragraph 16.

17. President Clinton denies each and every allegation set forth in paragraph 17, except he admits that on or about May 8, 1991, David Harrington was Director of the Arkansas Industrial Development Commission, having been elevated to that position by Governor Clinton.

18. President Clinton denies each and every allegation set forth in paragraph 18.

19. President Clinton denies each and every allegation set forth in paragraph 19.

20. President Clinton denies each and every allegation set forth in paragraph 20.

21. President Clinton denies each and every allegation set forth in paragraph 21.

22. President Clinton denies each and every allegation set forth in paragraph 22.

23. President Clinton denies each and every allegation set forth in paragraph 23.

24. President Clinton denies each and every allegation set forth in paragraph 24.

25. President Clinton denies each and every allegation set forth in paragraph 25.

26. President Clinton denies each and every allegation set forth in paragraph 26.

27. President Clinton is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 27, and therefore denies the same.

28. President Clinton denies that he engaged in any improper conduct with respect to plaintiff. He is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 28, and therefore denies the same.

29. President Clinton is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 29, and therefore denies the same.

30. President Clinton denies that he engaged in any improper conduct with respect to plaintiff. He also denies making the statement attributed to him in paragraph 30. President Clinton is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 30, and therefore denies the same.

31. President Clinton denies that he engaged in any improper conduct with respect to plaintiff. He is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 31, and therefore denies the same.

32. President Clinton denies that he engaged in any improper conduct with respect to plaintiff. He is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 32, and therefore denies the same.

33. President Clinton denies that he engaged in any improper conduct with respect to plaintiff. He is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 33, and therefore denies the same.

34. President Clinton denies that he engaged in any improper conduct with respect to plaintiff. He is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 34 and therefore denies the same.

35. President Clinton denies that he engaged in any improper conduct with respect to plaintiff. He is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 35, and therefore denies the same.

36. President Clinton is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 36, and therefore denies the same.

37. President Clinton is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 37, and therefore denies the same.

38. President Clinton denies that he engaged in any improper conduct with respect to plaintiff. President Clinton does not recall ever meeting plaintiff, and therefore denies each and every allegation set forth in paragraph 38.

39. President Clinton denies that he engaged in any improper conduct with respect to plaintiff or any other woman. President Clinton further denies that he took any action against plaintiff to chill or squelch her communications in any way. President Clinton further denies that he discriminated against plaintiff or had a custom, habit, pattern or practice of improper conduct with respect to any other women. He is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 39, and therefore denies the same.

40. President Clinton is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 40, and therefore denies the same.

41. President Clinton is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 41, and therefore denies the same.

42. President Clinton denies that he engaged in any improper conduct with respect to plaintiff. To the extent the allegations set forth in paragraph 42 merely refer to or quote from the article in the American Spectator, attached as exhibit A to the Amended Complaint, no response is required.

43. President Clinton denies that he engaged in any improper conduct with respect to plaintiff or others. President Clinton further denies that the American Spectator article is accurate. To the extent the allegations set forth in paragraph 43 merely refer to or quote from the article in the American Spectator, attached as exhibit A to the Amended Complaint, no response is required.

44. President Clinton denies each and every allegation set forth in paragraph 44.

45. President Clinton denies that he engaged in any improper conduct with respect to plaintiff. He is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 45, and therefore denies the same.

46. President Clinton denies that he made sexual advances toward plaintiff. He also denies the quote attributed to him in paragraph 46. President Clinton is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 46, and therefore denies the same.

47. President Clinton denies each and every allegation in paragraph 47, except that he admits that a false article was published in the American Spectator, that plaintiff spoke publicly on February 11, 1994, and that representatives of plaintiff asked the President to acknowledge certain things which were untrue.

48. Based on information and belief, President Clinton admits that he and those acting on his behalf have denied plaintiff's allegations. Each and every other allegation set forth in paragraph 48 is denied.

49. Based on information and belief, President Clinton admits that his legal counsel made the statements set forth in paragraph 49. Each and every other allegation set forth in paragraph 49 is denied.

50. Based on information and belief, President Clinton admits that White House spokeswoman Dee Dee Meyers made the statement set forth in paragraph 50. Each and every other allegation set forth in paragraph 50 is denied. To the extent paragraph 50 states legal conclusions, no response is required.

51. President Clinton denies each and every allegation set forth in paragraph 51.

52. President Clinton admits that the general public reposes trust and confidence in the integrity of the holder of the office of the Presidency. Each and every other allegation set forth in paragraph 52 is denied.

53. President Clinton denies each and every allegation set forth in paragraph 53, except that he admits he was a member of the Arkansas State Bar on or about May 8, 1991. President Clinton also denies he was a partner at Wright, Lindsey & Jennings, but admits he formerly was Of Counsel to that firm. To the extent paragraph 53 states legal conclusions, no response is required.

54. President Clinton denies each and every allegation set forth in paragraph 54. To the extent paragraph 54 states legal conclusions, no response is required.

55. President Clinton denies each and every allegation set forth in paragraph 55. To the extent paragraph 55 states legal conclusions, no response is required.

56. President Clinton denies each and every allegation set forth in paragraph 56. To the extent paragraph 56 states legal conclusions, no response is required.

57. President Clinton denies each and every allegation set forth in paragraph 57.

Count I: Deprivation of Constitutional Rights and Privileges (42 U.S.C. § 1983)

58. President Clinton repeats and realleges his answers to the allegations appearing in paragraphs 1-57 as if fully set forth herein. President Clinton denies that he engaged in any improper conduct or deprived plaintiff of any constitutional right or privilege protected under 42 U.S.C. § 1983, and therefore denies each and every allegation set forth in paragraphs 58, 59, 60, 61, 62, 63, 64 and 65. To the extent plain-

tiff alleges due process violations, these claims were dismissed by the Court's Orders dated August 22, 1997 and November 24, 1997. Therefore, no response is required. To the extent plaintiff alleges additional grounds for recovery, e.g., an alleged quid pro quo third party favoritism claim, an alleged hostile environment third party favoritism claim or a First Amendment claim, the Court rejected any separate cause of action for any such claims by Order dated November 24, 1997. Therefore, no response is required. To the extent paragraphs 58-65 state legal conclusions, no response is required.

Count II: Conspiracy To Deprive Persons of Equal Protection of the Laws (42 U.S.C. § 1985(3))

59. President Clinton repeats and realleges his answers to the allegations appearing in paragraphs 1-65 as if fully set forth herein. President Clinton denies that he engaged in a conspiracy to deprive plaintiff of any constitutionally protected right, and therefore denies the allegations set forth in paragraphs 66, 67, 68 and 69. To the extent plaintiff alleges due process violations, these claims were dismissed by the Court's Orders dated August 22, 1997 and November 24, 1997. Therefore, no response is required. To the extent paragraphs 66-69 state legal conclusions, no response is required.

Count III: Intentional Infliction of Emotional Distress and Outrage

60. President Clinton repeats and realleges his answers to the allegations appearing in paragraphs 1-69 as if fully set forth herein. President Clinton denies that he engaged

in any improper conduct with respect to plaintiff or any conduct intended to or which he knew was likely to inflict emotional distress upon plaintiff, and therefore denies the allegation of paragraphs 70, 71, 72, 73 and 74. To the extent paragraphs 70-74 state legal conclusions, no response is required.

Count IV: Declaratory Judgment

61. President Clinton repeats and realleges his answers to the allegations appearing in paragraphs 1-74 as if fully set forth herein. President Clinton denies all of the claims asserted in Counts I-III, and therefore denies the allegations appearing in paragraphs 75, 76 and 77(a)-(m). To the extent plaintiff seeks relief in the form of declaratory judgment, the Court by Order dated November 24, 1997 held that such request for relief shall have no effect. Therefore, no response is required. Moreover, to the extent plaintiff seeks declaratory judgment for alleged First Amendment violations, or for alleged violations of the Equal Protection Clause based on alleged quid pro quo third party favoritism or hostile environment third party favoritism, such claims have been rejected as separate causes of action by Order dated November 24, 1997. Therefore, no response is required. To the extent plaintiff seeks a declaratory judgment for alleged due process violations, such claims were dismissed by Orders dated August 22, 1997 and November 24 1997. Therefore, no response is required. To the extent plaintiff seeks a declaratory judgment for alleged violations of "28 U.S.C. § 1983" or "28 U.S.C. § 1985(3)," (paragraphs 77(c) & (g)) no

such provisions exist, and therefore no response is required. To the extent paragraphs 75-77(a)-(m) state legal conclusions, no response is required.

62. To the extent any allegation set forth in the Amended Complaint is not specifically answered above, it is hereby denied.

AS TO PLAINTIFF'S REQUEST FOR RELIEF

63. President Clinton denies that plaintiff is entitled to any relief whatsoever in connection with the Amended Complaint. To the extent plaintiff seeks to recover costs and attorney's fees and expenses "under 28 U.S.C. § 1988" this request must be rejected as no such provision awarding fees and costs exists.

AFFIRMATIVE DEFENSES

President Clinton alleges the following affirmative defenses to the allegations that he engaged in conduct violative of federal or state law.

FIRST AFFIRMATIVE DEFENSE

64. The Amended Complaint fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

65. Plaintiff's cause of action for intentional infliction of emotional distress is time-barred.

THIRD AFFIRMATIVE DEFENSE

66. Plaintiff's claims are barred because she did not incur any injury or damages cognizable at law.

FOURTH AFFIRMATIVE DEFENSE

67. Plaintiff's injuries and damages, if any, were caused by the acts of third persons, for which the President is not responsible.

FIFTH AFFIRMATIVE DEFENSE

68. Plaintiff's injuries and damages, if any, were caused by the acts of plaintiff and her representatives, for which the President is not responsible.

SIXTH AFFIRMATIVE DEFENSE

69. Plaintiff is not entitled to punitive damages under the applicable law.

* * *

Wherefore, President Clinton respectfully requests that the Amended Complaint be dismissed with prejudice and that this Court enter judgment in his favor and grant such other relief as the Court deems just and proper.

Respectfully submitted,

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Counsel to
President William J. Clinton

Dated: December 22, 1997

CERTIFICATE OF SERVICE

I hereby certify that on the 17 day of December, 1997, a true and correct copy of President Clinton's Answer to the First Amended Complaint was served via Federal Express and first class United States Mail postage prepaid to:

Bill W. Bristow, Esq.
216 East Washington
Jonesboro, Arkansas 72401

Donovan Campbell, Jr., Esq.
Rader, Campbell, Fisher & Pyke
Stemmons Place, Suite 1080
2777 Stemmons Freeway
Dallas, Texas 75207

Kathlyn Graves

Kathlyn Graves, Esq.

UNDER SEAL - RETURN TO VAULT

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

UNDER SEAL

Filed May 26, 1998

No. 98-3052

IN RE: SEALED CASE

Consolidated with
Nos. 98-3053 & 98-3059

Appeals from the United States District Court
for the District of Columbia
(98ms00068)

Nathaniel H. Speights filed the briefs for appellant Monica Lewinsky.

Charles J. Ogletree, Jr. filed the briefs for appellant Francis D. Carter, Esq.

Robert J. Bittman, Deputy Independent Counsel, filed the briefs for cross-appellant the United States.

Before: GINSBURG, RANDOLPH, and TATEL, *Circuit Judges*.

Opinion for the Court filed by *Circuit Judge* RANDOLPH.

RANDOLPH, *Circuit Judge*: In 1997, Monica S. Lewinsky, a former White House intern, received a subpoena to produce items and to testify in *Paula Jones v.*

Court for the Eastern District of Arkansas. The subpoena requested, among other things, documents relating to an alleged relationship between President Clinton and Lewinsky and any gifts the President may have given her. Lewinsky retained Francis D. Carter, Esq., to represent her regarding the subpoena.

Carter drafted an affidavit for Lewinsky, which she signed under penalty of perjury. The affidavit, submitted to the Arkansas district court as an exhibit to Lewinsky's motion to quash the subpoena, states in relevant part:

> I have never had a sexual relationship with the President, [and] he did not propose that we have a sexual relationship . . .. The occasions that I saw the President after I left my employment at the White House in April, 1996, were official receptions, formal functions or events related to the U.S. Department of Defense, where I was working at the time. There were other people present on those occasions.

On January 16, 1998, at the request of the Attorney General, a Special Division of this Court expanded the jurisdiction of the Office of Independent Counsel to include "authority to investigate . . . whether Monica Lewinsky or others suborned perjury, obstructed justice, intimidated witnesses, or otherwise violated federal law . . . in dealing with witnesses, potential witnesses, attorneys, or others concerning the civil case *Jones v. Clinton*." Order of the Special Division, Jan. 16, 1998. On February 2 and 9, 1998, as part of that investigation, a grand jury issued subpoenas to Carter, the first for documents and other items, the second for his testimony. Carter

moved to quash the subpoenas, contending, *inter alia*, that the documents, testimony, and other items sought were protected from disclosure by the attorney-client privilege, the work-product privilege, and Lewinsky's Fifth Amendment privilege against self-incrimination. Lewinsky, as the real-party-in-interest, filed a response in support of Carter's motion. The United States opposed the motion, arguing among other things that the crime-fraud exception vitiated any claims of attorney-client or work-product privilege and that the Fifth Amendment did not bar production of the requested materials. The district court ordered Carter to comply with the two grand jury subpoenas except to the extent that compliance would "call for him to disclose materials in his possession that may not be revealed without violating Monica S. Lewinsky's Fifth Amendment rights."

Carter and Lewinsky argue in separate appeals that the district court erred in rejecting their motions to quash the grand jury subpoenas in their entirety. In its cross-appeal, the United States, through the Office of Independent Counsel, claims that the Fifth Amendment does not bar production of any of the materials the grand jury subpoenaed from Carter.

We dismiss Carter's appeal for want of jurisdiction. Well-settled law dictates that "one to whom a subpoena is directed may not appeal the denial of a motion to quash that subpoena but must either obey its commands or refuse to do so and contest

the validity of the subpoena if he is subsequently cited for contempt on account of his failure to obey." *United States v. Ryan*, 402 U.S. 530, 532 (1971); *see Cobbledick v. United States*, 309 U.S. 323, 328 (1940); *In re Sealed Case*, 107 F.3d 46, 48 n.1 (D.C. Cir. 1997). Rather than risking contempt, Carter has sworn that he will comply with the subpoenas if ordered to do so.[1]

Our jurisdiction over Lewinsky's appeal is another matter. Lewinsky is the holder of the privilege. Given Carter's sworn declaration that he will give testimony if ordered, she is entitled to appeal the district court's ruling rejecting Carter's assertion of the privilege. *See In re Sealed Case*, 107 F.3d at 48 n.1.

The district court held that the crime-fraud exception to the attorney-client privilege applied. After reviewing the government's *in camera* submission, the court found that "Ms. Lewinsky consulted Mr. Carter for the purpose of committing perjury and obstructing justice and used the material he prepared for her for the purpose of committing perjury and obstructing justice."[2] Lewinsky tells us she could not have

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[1] In addition to adopting Lewinsky's arguments regarding the crime-fraud exception, Carter claims that the subpoenas are overbroad, unreasonable, and oppressive and that the district court's reliance on the Independent Counsel's *ex parte* submissions in enforcing the subpoenas violated due process. Contrary to Carter's contention, the issues he seeks to present are thus neither "virtually identical" to, nor "inextricably intertwined" with, those Lewinsky raises.

[2] The district court did not find, nor did the Independent Counsel suggest, any impropriety by Carter.

committed either crime: the government could not establish perjury because her denial of having had a "sexual relationship" with President Clinton was not "material" to the Arkansas proceedings within the meaning of 18 U.S.C. § 1623(a); and her affidavit containing this denial could not have constituted a "corrupt[] . . . endeavor[] to influence" the Arkansas district court within the meaning of 18 U.S.C. § 1503. Both of Lewinsky's propositions rely on the Arkansas district court's ruling on January 30, 1998, after Lewinsky had filed her affidavit, that although evidence concerning Lewinsky might be relevant, it would be excluded from the civil case under FED. R. EVID. 403 as unduly prejudicial, "not essential to the core issues in th[e] case," and to prevent undue delay resulting from the Independent Counsel's investigation.[3]

A statement is "material" if it "has a natural tendency to influence, or was capable of influencing, the decision of the tribunal in making a [particular] determination." *United States v. Barrett*, 111 F.3d 947, 953 (D.C. Cir.), *cert. denied*, 118 S. Ct. 176 (1997). The "central object" of any materiality inquiry is "whether the misrepresentation or concealment was predictably capable of affecting, *i.e.*, had a

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[3] Lewinsky does not appear to contest directly the district court's finding that she made one or more false statements in her sworn affidavit. Even so, we have independently reviewed the *in camera* materials considered by the district court and conclude that sufficient evidence existed to support the court's finding.

natural tendency to affect, the official decision." *Kungys v. United States*, 485 U.S. 759, 771 (1988). Lewinsky used the statement in her affidavit, quoted above, to support her motion to quash the subpoena issued in the discovery phase of the Arkansas litigation. District courts faced with such motions must decide whether the testimony or material sought is reasonably calculated to lead to admissible evidence and, if so, whether the need for the testimony, its probative value, the nature and importance of the litigation, and similar factors outweigh any burden enforcement of the subpoena might impose. *See* FED. R. CIV. P. 26(b)(1), 45(c)(3)(A)(iv); *Linder v. Department of Defense*, 133 F.3d 17, 24 (D.C. Cir. 1998); *see generally* 9A CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 2459 (2d ed. 1995). There can be no doubt that Lewinsky's statements in her affidavit were -- in the words of *Kungys v. United States* -- "predictably capable of affecting" this decision. She executed and filed her affidavit for this very purpose.

As to obstruction of justice, 18 U.S.C. § 1503 is satisfied whenever a person, with the "intent to influence judicial or grand jury proceedings," takes actions having the "natural and probable effect" of doing so. *United States v. Aguilar*, 515 U.S. 593, 600 (1995) (citations and quotation marks omitted); *see United States v. Russo*, 104 F.3d 431, 435-36 (D.C. Cir. 1997). Our review of the *in camera* materials on which the district court based its decision convinces us that the government sufficiently

established the elements of a violation of § 1503. That is, the government offered "evidence that if believed by the trier of fact would establish the elements of" the crime of obstruction of justice. *In re Sealed Case*, 107 F.3d at 50 (citation and quotation marks omitted); *see In re Sealed Case*, 754 F.2d 395, 399-400 (D.C. Cir. 1985) (same).

Lewinsky maintains that the district court erred in treating, as admissible for *in camera* review, transcripts of taped conversations between Lewinsky and Linda Tripp. She relies on the following statement in *United States v. Zolin*, 491 U.S. 554, 575 (1989): "the threshold showing to obtain *in camera* review may be met by using any relevant evidence, lawfully obtained, that has not been adjudicated to be privileged." *Zolin*, and the statement just quoted, dealt with a rather different problem than the one presented here. Sometimes a party seeking to overcome the privilege by invoking the crime-fraud exception asks the district court to examine *in camera* the privileged material to determine whether it provides evidence of a crime. The issue *Zolin* addressed is under what circumstances a district court should undertake such *in camera* review. *Zolin's* answer, as the quotation indicates, was that the court should do so only when there has been a threshold showing through evidence lawfully obtained. *See In re Grand Jury Proceedings*, 33 F.3d 342, 350 (4th Cir. 1994). In this case, the district court reviewed *in camera* not the allegedly

privileged material, but other evidence intended to establish that the crime-fraud exception applied. In any event, even if *Zolin* applied, Lewinsky gains nothing from the decision. She maintains that the Tripp tapes were not "lawfully obtained" and therefore should not have been considered *in camera*. But the government satisfied its burden wholly apart from the Tripp tapes. Other government evidence -- consisting of grand jury testimony and documents -- established that the crime-fraud exception applied. Because that other evidence, if believed by the trier of fact, combined with the circumstances under which Lewinsky retained Carter, would establish the elements of the crime-fraud exception, there is no reason for us to consider her arguments about the tapes.[4]

Lewinsky raises other objections to the district court's decision, including the argument that production of the subpoenaed materials would violate her Fifth Amendment privilege against self-incrimination. Our resolution of the cross-appeal,

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[4] Lewinsky's brief suggests, in a short passage, that other evidence obtained by the grand jury is tainted by the alleged illegality of the Tripp tapes. *United States v. Calandra*, 414 U.S. 338 (1974), refused to extend the exclusionary rule -- and hence doctrines such as the fruit-of-the-poisonous-tree -- to grand jury proceedings. No grand jury witness may refuse to answer questions on the ground that the questions are based on illegally obtained evidence. *See* 414 U.S. at 353-55. It follows that regardless of the legality of the Tripp tapes, the grand jury did not unlawfully obtain the other evidence presented to the district court *in camera*.

discussed next, disposes of that claim. As to the remainder of Lewinsky's arguments, we have accorded each of them full consideration and conclude that none has merit.[5]

This brings us to the Independent Counsel's cross-appeal. The district court ruled that compelling Carter to produce materials his client gave him would violate Lewinsky's Fifth Amendment privilege because it would compel her to admit the materials exist and had been in her possession. The Supreme Court foreclosed that line of reasoning in *Fisher v. United States*, 425 U.S. 391 (1976). Documents transferred from the accused to his attorney are "obtainable without personal compulsion on the accused," and hence the accused's "Fifth Amendment privilege is . . . not violated by enforcement of the [subpoena] directed toward [his] attorneys. This is true whether or not the Amendment would have barred a subpoena directing the [accused] to produce the documents while they were in his hands." *Id.* at 398, 397; *see also Couch v. United States*, 409 U.S. 322, 328 (1973).

Regardless whether Lewinsky herself would have been able to invoke her Fifth Amendment privilege, *but see Andresen v. Maryland*, 427 U.S. 463, 473-74 (1976), the district court's refusal to order full compliance with the subpoenas could be

---

[5] In her reply brief, Lewinsky argues for first time that the district court should have permitted her to examine the material the court reviewed *in camera*. This argument comes too late to be considered. *See Rollins Envtl. Servs. (NJ) Inc. v. EPA*, 937 F.2d 649, 652 n.2 (D.C. Cir. 1991).

sustained only if the materials sought fell under a valid claim of attorney-client privilege. *See Fisher*, 425 U.S. at 403-05; *see also In re Feldberg*, 862 F.2d 622, 629 (7th Cir. 1988). But the district court held, correctly, that no valid attorney-client privilege existed. Under *Fisher*, the district court therefore should have denied the motions to quash in their entirety.[6]

Accordingly, we affirm in part and reverse in part the order of the district court and remand the case for proceedings consistent with this opinion. No. 98-3053 is dismissed. The mandate shall issue seven days after the date of this opinion. *See* FED. R. APP. P. 41(a); D.C. CIR. R. 41(a)(1); *Johnson v. Bechtel Assocs. Prof'l. Corp.*, 801 F.2d 412, 415 (D.C. Cir. 1986); *Public Citizen Health Research Group v. Auchter*, 702 F.2d 1150, 1159 n.31 (D.C. Cir. 1983).

So ordered.

---

[6] As respondent in the cross-appeal, Carter makes additional arguments against the applicability of the crime-fraud exception. But because the only issue in the cross-appeal is the applicability of the Fifth Amendment, Carter may not use the cross-appeal to press arguments we will not consider in his direct appeal. *See Grimes v. District of Columbia*, 836 F.2d 647, 651-52 (D.C. Cir. 1988).

UNDER SEAL - RETURN TO VAULT

United States Court of Appeals 6/3/98
FOR THE DISTRICT OF COLUMBIA CIRCUIT BY: E. Brown

ATTACHED: — Judgment Order
— Motion
— Order on Costs

No. 98-3052 September Term, 1997
98ms00068

In re: Sealed Case, No. 98-3052

Consolidated with 98-3053, 98-3059

UNITED STATES COURT OF APPEALS
FOR DISTRICT OF COLUMBIA CIRCUIT
FILED
MAY 26 1998
CLERK

BEFORE: Ginsburg, Randolph and Tatel, *Circuit Judges*

JUDGMENT

These causes came on to be heard on the record on appeal from the United States District Court for the District of Columbia and were argued by counsel. On consideration thereof, it is

ORDERED and **ADJUDGED**, by the Court, that the judgment of the District Court appealed from in these causes is hereby affirmed in part and reversed in part in Nos 98-3052 and 98-3059, and the cases are remanded, and No 98-3053 is dismissed, all in accordance with the opinion for the Court filed herein this date

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: Linda Jones
Deputy Clerk

Date: May 26, 1998
Opinion for the Court filed by Circuit Judge Randolph.

[EXHIBIT 12]

GOVERNMENT EXHIBIT ML-4

AFFIDAVIT OF JANE DOE # 6

1. My name is Jane Doe #6 . I am 24 years old and I currently reside at 700 New Hampshire Avenue, N.W., Washington, D.C. 20037.

2. On December 19, 1997, I was served with a subpoena from the plaintiff to give a deposition and to produce documents in the lawsuit filed by Paula Corbin Jones against President William Jefferson Clinton and Danny Ferguson.

3. I can not fathom any reason that the plaintiff would seek information from me for her case.

4. I have never met Ms. Jones, nor do I have any information regarding the events she alleges occurred at the Excelsior Hotel on May 8, 1991 or any other information concerning any of the allegations in her case.

5. I worked at the White House in the summer of 1995 as a White House intern. Beginning in December, 1995, I worked in the Office of Legislative Affairs as a staff assistant for correspondence. In April, 1996, I accepted a job as assistant to the Assistant Secretary for Public Affairs at the U.S. Department of Defense. I maintained that job until December 26, 1997. I am currently unemployed but seeking a new job.

6. In the course of my employment at the White House I met President Clinton several times. I also saw the President at a number of social functions held at the White House. When I worked as an intern, he appeared at occasional functions attended by me and several other interns. The correspondence I drafted while I worked at the Office of Legislative Affairs was seen and edited by supervisors who either had the President's signature affixed by mechanism or, I believe, had the President sign the correspondence itself.

7. I have the utmost respect for the President who has always behaved appropriately in my presence.

8. I have never had a sexual relationship with the President, he did not propose that we have a sexual relationship, he did not offer me employment or other benefits in exchange for a sexual relationship, he did not deny me employment or other benefits for rejecting a sexual relationship. I do not know of any

other person who had a sexual relationship with the President, was offered employment or other benefits in exchange for a sexual relationship, or was denied employment or other benefits for rejecting a sexual relationship. The occasions that I saw the President after I left my employment at the White House in April, 1996, were official receptions, formal functions or events related to the U.S. Department of Defense, where I was working at the time. There were other people present on those occasions.

9. Since I do not possess any information that could possibly be relevant to the allegations made by Paula Jones or lead to admissible evidence in this case, I asked my attorney to provide this affidavit to plaintiff's counsel. Requiring my deposition in this matter would cause disruption to my life, especially since I am looking for employment, unwarranted attorney's fees and costs, and constitute an invasion of my right to privacy.

I declare under the penalty of perjury that the foregoing is true and correct.

Monica S. Lewinsky

MONICA S. LEWINSKY

* * * \

DISTRICT OF COLUMBIA, ss:

MONICA S. LEWINSKY, being first duly sworn on oath according to law, deposes and says that she has read the foregoing AFFIDAVIT OF JANE DOE # 6 by her subscribed, that the matters stated herein are true to the best of her information, knowledge and belief.

Monica S Lewinsky
MONICA S. LEWINSKY

SUBSCRIBED AND SWORN to before me this 7th day of January, 1998.

Kathleen M Grimes
NOTARY PUBLIC, D.C.
My Commission expires: My Commission Expires August 31, 1998

849-DC-00000636

[EXHIBIT 13]

Paula Jones v. William Jefferson Clinton and Danny Ferguson
No. LR-C-94-290 (E.D. Ark.)

DEPOSITION OF WILLIAM JEFFERSON CLINTON

Definition of Sexual Relations

For the purposes of this deposition, a person engages in "sexual relations" when the person knowingly engages in or causes -

(1) contact with the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to arouse or gratify the sexual desire of any person;

(2) contact between any part of the person's body or an object and the genitals or anus of another person; or

(3) contact between the genitals or anus of the person and any part of another person's body.

"Contact" means intentional touching, either directly or through clothing.

849-DC-00000586

DEPOSITION EXHIBIT
1
Clinton 1998

[EXHIBIT 14]

Andrew J. Scott
01/20/98 10:55.10 AM

Record Type Record

To See the distribution list at the bottom of this message

cc: adam.carstens@mail.house.gov
Subject: DRUDGE-REPORT-EXCLUSIVE 1/18/98

SEX ---- LIES ---- Videotape?

At some point, whether now or after the historians get to him, this guy is going down.

---------- Forwarded by Andrew J Scott/OMB/EOP on 01/20/98 10 54 AM ----------

drudge@drudgereport.com
01/17/98 11:27.00 PM

Record Type: Record

To Andrew J Scott@EOP

cc
Subject: DRUDGE-REPORT-EXCLUSIVE 1/18/98

XXXXX DRUDGE REPORT XXXXX 06.11 UTC SUN JAN 18 1998 XXXXX

NEWSWEEK KILLS STORY ON WHITE HOUSE INTERN

BLOCKBUSTER REPORT: 23-YEAR OLD, FORMER WHITE HOUSE INTERN, SEX RELATIONSHIP WITH PRESIDENT

V006-DC-00003772

World Exclusive
Must Credit the DRUDGE REPORT

At the last minute, at 6 p.m. on Saturday evening, NEWSWEEK magazine killed a story that was destined to shake official Washington to its foundation: A White House intern carried on a sexual affair with the President of the United States!

The DRUDGE REPORT has learned that reporter Michael Isikoff developed the story of his career, only to have it spiked by top NEWSWEEK suits hours before publication. A young woman, 23, sexually involved with the love of her life, the President of the United States, since she was a 21-year-old intern at the White House. She was a frequent visitor to a small study just off the Oval Office where she claims to have indulged the president's sexual preference. Reports of the relationship spread in White House quarters and she was moved to a job at the Pentagon, where she worked until last week.

HB 004584

The young intern wrote long love letters to President Clinton, which she delivered through a delivery service. She was a frequent visitor at the White House after midnight, where she checked in the WAVE logs as visiting a secretary named Betty Curry, 57.

The DRUDGE REPORT has learned that tapes of intimate phone conversations exist.

The relationship between the president and the young woman become strained when the president believed that the young woman was bragging to others about the affair.

NEWSWEEK and Isikoff were planning to name the woman. Word of the story's impeding release caused blind chaos in media circles; TIME magazine spent Saturday scrambling for its own version of the story, the DRUDGE REPORT has learned. The NEW YORK POST on Sunday was set to front the young intern's affair, but was forced to fall back on the dated ABC NEWS Kathleen Willey break.

The story was set to break just hours after President Clinton testified in the Paula Jones sexual harassment case.

Ironically, several years ago, it was Isikoff that found himself in a shouting match with editors who were refusing to publish even a portion of his meticulously researched investigative report that was to break Paula Jones. Isikoff worked for the WASHINGTON POST at the time, and left shortly after the incident to build them for the paper's sister magazine, NEWSWEEK.

Michael Isikoff was not available for comment late Saturday. NEWSWEEK was on voice mail.

The White House was busy checking the DRUDGE REPORT for details.

Developing...

Filed by Matt Drudge
The REPORT is moved when circumstances warrant
http://www.drudgereport.com for breaks
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V006-DC-00003773

HB 004685

[EXHIBIT 15]

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DEC. -05 97(FRI) 16:57 RADER, CAMPBELL TEL:214 630 9996 P 001

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Kathlyn Graves, Esq. TELECOPY NO. (501) 376-9442
Stephen Engstrom, Esq. TELECOPY NO. (501) 375-5914
Bill W. Bristow, Esq. TELECOPY NO. (870) 931-4814

FROM ATTORNEY/SENDER: T. Wesley Holmes 1408-DC-00000005

COMMENTS:

THE WHITE HOUSE

WASHINGTON

September 4, 1998

Via Hand Delivery

Julie Corcoran, Esq.
Office of the Independent Counsel
Suite 490 North
1001 Pennsylvania Ave, N.W.
Washington, D.C. 20004

Dear Julie:

I am enclosing additional documents from the Counsel's Office that are responsive to your Subpoena D1512. These documents bear bates numbers S 020780 – S020799. As you and Mr. Crane know, a number of the individuals who may have responsive documents are on vacation or are travelling with the President. I will attempt to gather and produce any remaining documents responsive to this request early next week. Mr. Crane asked specifically about documents from Ms. Lewis. She is out of the Office, but her staff has indicated she has no responsive documents. I will confirm this with her when she returns.

I trust that your office will treat the enclosed information as confidential and entitled to all protection accorded by law, including Federal Rule of Criminal Procedure 6(e), to documents subpoenaed by a federal grand jury. If you have any questions, I can be reached at (202) 456-7804.

Sincerely,

Michelle Peterson
Associate Counsel to the President

Enclosures

1512-DC-00000018

[EXHIBIT 16]

Talking Points
January 24, 1998

Q: Given all the events of the last week, don't you believe the President owes the American people an explanation of his relationship and activities with respect to Ms. Lewinsky?

A: The President has given the American people the answer to the most important questions: he did not have a sexual relationship with Ms. Lewinsky and he never asked anyone to do anything but tell the truth. There is an investigation on-going and the President is cooperating with that investigation. However, given the climate and types of investigative techniques being used, it is only when the investigation has concluded and the President has been exonerated, that he can address the specific questions you may have.

Q: There are reports that Ms. Lewinsky has been granted full immunity by Mr. Starr in exchange for testimony that she had oral sex with the President, but that he did not tell her to lie or try to suborn perjury. Does the President deny her testimony?

A: If those reports are true, then he certainly denies that he ever had oral sex with Ms. Lewinsky.

Q: What acts does the President believe constitute a sexual relationship?

A: I can't believe we're on national television discussing this. I am not about to engage in an "act-by-act" discussion of what constitutes a sexual relationship.

Q: Well, for example, Ms. Lewinsky is on tape indicating that the President does not believe oral sex is adultery. Would oral sex, to the President, constitute a sexual relationship?

A: Of course it would.

Q: Would touching designed to bring about an orgasm constitute a sexual relationship?

A: Look, I'm not going down this road because soon you'll be asking me whether hugging someone is constitutes sex and the President will be having sex with everyone in America

Q: When do you expect the President to explain or at least describe the nature of his relationship with Ms. Lewinsky?

A: I don't know, but let's remember: the President has answered the important questions about Ms. Lewinsky — that he did not have a sexual relationship with her and that he did not ask her to lie. And, he will cooperate with the on-going investigation as it moves forward.

1512-DC-000000[illegible]

S 0207

Q: In light of the gifts they reportedly exchanged with one another, and reports of telephone calls and letters, would you at least describe the President's relationship with Ms. Lewinsky as a friendship?

A: I'm sure they had a friendly relationship.

Q: What was the nature of Ms. Lewinsky's relationship with Ms. Currie and how frequently did she see her?

A: We're not going to get in the business of addressing some but not other questions. There is an on-going investigation and given the types of investigative techniques, we simply will not be in a position to address these questions until it is complete.

REDACTED

1512-DC-00000038

S 020799

[EXHIBIT 17]

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1/25/98 LATIMES A1
1/25/98 L.A. Times A1
1998 WL 2392128

Los Angeles Times
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Sunday, January 25, 1998

National Desk

CLINTON UNDER FIRE Clinton Enlists Kantor, Offers Specific Denial
ELIZABETH SHOGREN; RICHARD A. SERRANO; DAVID WILLMAN
TIMES STAFF WRITERS

WASHINGTON -- President Clinton stepped up his defense against allegations of sexual misconduct, recruiting veteran political warrior and longtime advisor Mickey Kantor to become his personal counsel and signing off Saturday on a set of "talking points" for aides that significantly amplify his denial of a sexual relationship with a White House intern.

The president "certainly denies that he ever had oral sex" with 24-year-old former intern Monica S. Lewinsky, according to the memo to be used by his defenders. Lewinsky herself, in a sworn statement, has denied having a sexual relationship with Clinton. In telephone conversations secretly tape-recorded by a friend, however, Lewinsky reportedly said they had oral sex. The president's previous denials were viewed by some as being worded artfully so that they might exclude oral sex.

Approval of the talking points may be an early sign of the counterattack that some Clinton advisors hope Kantor will help the White House launch after a week of near-paralysis.

Kantor, who began helping the White House late Friday and continued to meet with aides there on Saturday, played a key role in devising the response that saved Clinton's 1992 bid for the presidency when nightclub singer Gennifer Flowers accused the then-Arkansas governor of sexual impropriety. And it is Kantor's political savvy, more than his legal expertise, that will be tested now.

In the tumultuous week since independent counsel Kenneth W. Starr began investigating claims that Lewinsky was involved sexually with Clinton, the White House has seen its position steadily erode. Aides, hobbled by legal concerns and unsure about the facts, have been unable to counterattack.

And, as senior administration officials noted bitterly on Saturday, efforts to persuade congressional or other prominent Democrats to speak out for Clinton have almost uniformly failed.

JANUARY 14, 1999 889

Indeed, Clinton's own former chief of staff, Leon E. Panetta, publicly suggested it might be best for Vice President Al Gore to take over if the allegations prove true.

What Other Developments Disclose

Against this darkening background, there were these other developments:

* Lewinsky's lawyer, William Ginsburg, said negotiations with Starr's office are at a standstill. Ginsburg demanded "complete immunity" from prosecution before Lewinsky will cooperate with the investigation into possible perjury, obstruction of justice or other criminal wrongdoing by Clinton.

"That's my line in the sand," he said.

* New excerpts of Linda Tripp's tapes of Lewinsky, released by Newsweek magazine, show the two women discussing Lewinsky's plan to lie about her relations with Clinton, as well as pressures she was under to cover it up.

* Television film was unearthed showing Clinton surrounded by voters at an outdoor rally in November 1996, with a broadly smiling Lewinsky standing right in front of him and then leaning forward for a presidential embrace.

* After a debate over tactics, the White House decided not to avoid today's television talk shows but instead to send three politically oriented aides, Rahm Emanuel, Paul Begala and Ann Lewis, before the cameras to defend the president.

The decision to bring Kantor onto the team reflected a realization by Clinton and his inner circle that events, and with them public opinion, were outrunning their efforts to protect themselves.

Not only was almost no prominent figure rising vigorously to the president's defense, but the torrent of leaks about the supposed nature of Clinton's alleged relationship with Lewinsky was so shocking that by Saturday, talk of impeachment and resignation was commonplace. "There's nobody for him," one veteran Democratic operative said, reflecting the pervasive gloom. "Even Nixon had a few people for him at the end."

Tacitly acknowledging the downward slide and the difficulty in arresting it, Rep. Charles B. Rangel (D-N.Y.) said: "When the president has not more vigorously challenged those who make these allegations but speaks in terms of legal jargon, it creates a bad situation."

Said a senior administration official: "We are dealing with a rapidly moving legal situation caused by an extremely aggressive independent counsel. To some extent, the press is moving this

story faster than it is possible for us to respond to."

It was not just the speed of press revelations that hampered the White House.

While his lawyers urged caution from the beginning, Clinton's political advisors, at first, argued for prompt disclosure of all the facts--taking it for granted that Clinton, as he had so often in the past, could make his case successfully to the public.

Only gradually have some senior aides come to realize that such a press conference or other public appearance might not be feasible.

"The political people are catching up with the legal people about the facts, and they recognize that the facts may be such that it would be better to wait and see what develops before he goes out" in public, one senior official said later Saturday.

The talking points represented a middle ground.

Members of the White House staff had been working for several days to draft the detailed set of authorized answers administration officials and other defenders could give to questions about the matter

In general, they affirm the president's contention that "there was no improper relationship" with Lewinsky. But they deal specifically with oral sex because some skeptics have suggested Clinton, in effect, had his fingers crossed in his earlier denials because--it was suggested--he does not believe having oral sex constitutes a sexual relationship.

Bringing Kantor aboard, as Clinton did with a face-to-face appeal at the White House, is seen by some aides as an even more important sign that the White House is finally beginning to marshal its resources.

"They trust and like him on a personal level and know that he is savvy. He's been there for the president for most of his political life," a knowledgeable official said.

Moreover, making Kantor a personal lawyer instead of a White House aide helps the Clintons deal with another problem: Legally, members of the White House staff can be compelled to reveal what they have heard from the president, even if the aides are lawyers.

Thus, at least some senior aides have been reluctant to talk candidly with Clinton for fear they might be subpoenaed by Starr. And Clinton's legal team, though protected by lawyer-client privilege, lacks the political experience to advise him on that aspect of the issue.

Kantor, as a private lawyer with years of political experience, can bridge the gap.

Whether Kantor can find a rabbit in the hat again remains to be seen, but by Saturday night the mood inside the White House was more hopeful.

"I've had a lot of experience with these kinds of things, and this is one of the nastiest " an advisor said, but "I think we're going forward now, and forward direction is a lot better."

Talks Stalled, Lawyer for Lewinsky Says

Ginsburg, Lewinsky's lawyer said negotiations with the independent counsel's office are stalled, though he has continued to seek ways to restart the talks.

If his client does not receive "complete immunity," he said, she will exercise her 5th Amendment protection against self-incrimination if called before a federal grand jury Tuesday, as she is scheduled to do.

"The clock is ticking," Ginsburg said. " . . . But I need a promise not to prosecute."

For his part, the independent counsel appeared unwilling to yield on his demand that Lewinsky submit a detailed proffer, summarizing what she is willing to say under oath before immunity is promised.

"There has been no deal," said one source. We're not on the same page."

Ginsburg said he believes Starr's office is hesitant about granting her immunity because of earlier problems with potential prosecution witnesses in the past.

Ginsburg pointed to former Department of Justice official and Clinton confidant Webster L. Hubbell and former Whitewater real estate partner Susan McDougal, both of whom initially agreed to help Starr's office, but in the end did not present damaging testimony against Clinton.

"Starr and his office are afraid that they will be burned thrice," Ginsburg said. "Webb Hubbell and Susan McDougal went south, or sour, on him and did not participate. So he is concerned that he will get burned again."

Attorney Describes Apartment Search

Ginsburg described in detail a search and seizure of Lewinsky's property from her Watergate apartment on Thursday. He said the search, to which Lewinsky voluntarily consented, lasted two hours. Lewinsky and her mother were both present.

"The federal agents knocked on the door and the girls said, 'Good morning,' and they had coffee and cakes laid out," he said. "They [the agents] were very courteous. They went room by room, and they didn't tear anything apart."

Taken were her computer, several dresses and at least one dark-colored pantsuit. Also seized were gifts Lewinsky allegedly had received from the president and other White House staffers, such as a T-shirt, a hatpin and a book of Walt Whitman poetry. s Regarding the dresses, Ginsburg said he assumed that agents were looking for any signs of Clinton's semen. There has been speculation that semen on Lewinsky's clothing could be used to establish a DNA link to Clinton.

Ginsburg said he had no knowledge of any stained dresses.

"I'm not aware of it," he said. "And if such a thing existed, you wouldn't think my client would have had her dress cleaned after she had sex?"

The lawyer also sharply denied reports that he and Lewinsky turned down an offer of immunity from Starr's office shortly after she was confronted with the tape-recordings at a meeting at the Ritz-Carlton hotel in Arlington, Va.

Meanwhile, Ginsburg said Lewinsky continues to be racked by the allegations surrounding her, and that she also feels betrayed by Tripp, the friend who made the tape recordings.

"Monica's agenda is to unruin her life, to bring it into equilibrium and balance again, and to avoid a felony conviction and avoid jail."

Regarding Tripp, Ginsburg said: "Monica is angry. She feels betrayed. She doesn't understand, nor do I. What did Linda Tripp get? What's her motive?"

Times staff writers Jack Nelson, Jonathan Peterson, Alan C. Miller, Jane Hall and Richard T. Cooper contributed to this story.

TABULAR OR GRAPHIC MATERIAL SET FORTH IN THIS DOCUMENT IS NOT DISPLAYABLE

PHOTO: President Clinton hugs a woman identified as Monica S. Lewinsky during a rally in November 1996.; PHOTOGRAPHER: CNN

---- INDEX REFERENCES ----

KEY WORDS: CLINTON, BILL; LEWINSKY, MONICA S; KANTOR, MICKEY; PRESIDENT (U.S.); GOVERNMENT MISCONDUCT; UNITED STATES -- GOVERNMENT OFFICIALS; UNITED STATES -- GOVERNMENT EMPLOYEES;

[EXHIBIT 18]

LAW OFFICES
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DAVID E. KENDALL
(202) 434-5145

November 27, 1998

The Honorable Henry J. Hyde
Chairman, Committee on the Judiciary
United States House of Representatives
2138 Rayburn House Office Building
Washington, D.C. 20515-6216

By Hand

Dear Chairman Hyde:

We submit herewith responses by the President to the 81 requests for admission that we received on November 5, 1998.

In an effort to be of assistance to the Committee and to provide as much information as possible, we have treated your requests as questions and responded accordingly.

As you know, the President has answered a great many of these questions previously. Where that is the case, we have simply referenced the answers that have been previously given and, in some instances, supplemented those answers.

I want to emphasize again the point I made in the Preliminary Memorandum we submitted to the Committee more than two months ago: the President did not commit or suborn perjury, tamper with witnesses, obstruct justice or abuse power. As you know, we made two formal submissions to the Committee in September and one in October. We will be submitting a further memorandum on behalf of the President in the near future.

WILLIAMS & CONNOLLY

The Honorable Henry J. Hyde
November 27, 1998
Page 2

I will forward to you a sworn original of the responses before the end of the day.

Sincerely,

David E. Kendall

cc: The Honorable John Conyers, Jr.

RESPONSE OF WILLIAM J. CLINTON, PRESIDENT OF THE UNITED STATES, TO QUESTIONS SUBMITTED BY CONGRESSMAN HENRY HYDE, CHAIRMAN OF THE HOUSE JUDICIARY COMMITTEE

INTRODUCTORY STATEMENT

Set forth below are answers to the questions that you have asked me.

I would like to repeat, at the outset, something that I have said before about my approach to these proceedings. I have asked my attorneys to participate actively, but the fact that there is a legal defense to the various allegations cannot obscure the hard truth, as I have said repeatedly, that my conduct was wrong. It was also wrong to mislead people about what happened, and I deeply regret that.

For me, this long ago ceased to be primarily a legal or political issue and became instead a painful personal one, demanding atonement and daily work toward reconciliation and restoration of trust with my family, my friends, my Administration and the American people. I hope these answers will contribute to a speedy and fair resolution of this matter.

1. **Do you admit or deny that you are the chief law enforcement officer of the United States of America?**

Response to Request No. 1:

The President is frequently referred to as the chief law enforcement officer, although nothing in the Constitution specifically designates the President as such. Article II, Section 1 of the United States Constitution states that "[t]he executive Power shall be vested in a President of the United States of America," and the law enforcement function is a component of the executive power.

2. **Do you admit or deny that upon taking your oath of office that you swore you would faithfully execute the office of President of the United States, and would to the best of your ability, preserve, protect and defend the Constitution of the United States?**

Response to Request No. 2:

At my Inaugurations in 1993 and 1997, I took the following oath: "I do solemnly swear that I will faithfully execute the Office of President of the United States, and will to the best of my ability, preserve, protect and defend the Constitution of the United States."

3. **Do you admit or deny that, pursuant to Article II, section 2 of the Constitution, you have a duty to "take care that the laws be faithfully executed?"**

Response to Request No. 3:

Article II, Section 3 (not Section 2), of the Constitution states that the President "shall take Care that the Laws be faithfully executed" and that is a Presidential obligation.

4. **Do you admit or deny that you are a member of the bar and officer of the court of a state of the United States, subject to the rules of professional responsibility and ethics applicable to the bar of that state?**

Response to Request No. 4:

I have an active license to practice law (inactive for continuing legal education purposes) issued by the Supreme Court of Arkansas. The license, No. 73017, was issued in 1973.

5. **Do you admit or deny that you took an oath in which you swore or affirmed to tell the truth, the whole truth, and nothing but the truth, in a deposition conducted as part of a judicial proceeding in the case of *Jones v. Clinton* on January 17, 1998?**

Response to Request No. 5:

I took an oath to tell the truth on January 17, 1998, before my deposition in the Jones v. Clinton case. While I do not recall the precise wording of that oath, as I previously stated in my grand jury testimony on August 17, 1998, in taking the oath "I believed then that I had to answer the questions truthfully." App. at 458.[1]

6. Do you admit or deny that you took an oath in which you swore or affirmed to tell the truth, the whole truth, and nothing but the truth, before a grand jury empanelled as part of a judicial proceeding by the United States District Court for the District of Columbia Circuit on August 17, 1998?

Response to Request No. 6:

As the August 17, 1998, videotape reflects, I was asked "Do you solemnly swear that the testimony you are about to give in this matter will be the truth, the whole truth, and nothing but the truth, so help you God?," and I answered, "I do."

7. Do you admit or deny that on or about October 7, 1997, you received a letter composed by Monica Lewinsky in which she expressed dissatisfaction with her search for a job in New York?

Response to Request No. 7:

At some point I learned of Ms. Lewinsky's decision to seek suitable employment in New York. I do not recall receiving a letter in which she expressed dissatisfaction about her New York job search. I understand Ms. Lewinsky has stated that she sent a note indicating her decision to seek employment in New York, but I do not believe she has said the note expressed dissatisfaction about her search for a job there. App. at 822-23 (grand jury testimony of Ms. Lewinsky).

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[1] Citations to "App." refer to the Appendices to the Office of Independent Counsel Referral to the United States House of Representatives, as published by the House Judiciary Committee. Citations to "Supp." refer to the Supplemental Materials to the Office of Independent Counsel Referral, as published by the House Judiciary Committee. Citations to "Dep." refer to my January 17, 1998, deposition testimony in the civil case, Jones v. Clinton, No. LR-C-94-290 (E.D. Ark.).

8. **Do you admit or deny that you telephoned Monica Lewinsky early in the morning on October 10, 1997, and offered to assist her in finding a job in New York?**

Response to Request No. 8:

I understand that Ms. Lewinsky testified that I called her on the 9th of October, 1997. App. at 823 (grand jury testimony of Ms. Lewinsky). I do not recall that particular telephone call.

9. **Do you admit or deny that on or about October 11, 1997, you met with Monica Lewinsky in or about the Oval Office dining room?**

10. **Do you admit or deny that on or about October 11, 1997, Monica Lewinsky furnished to you, in or about the Oval Office dining room, a list of jobs in New York in which she was interested?**

11. **Do you admit or deny that on or about October 11, 1997, you suggested to Monica Lewinsky that Vernon Jordan may be able to assist her in her job search?**

12. **Do you admit or deny that on or about October 11, 1997, after meeting with Monica Lewinsky and discussing her search for a job in New York, you telephoned Vernon Jordan?**

Response to Request Nos. 9, 10, 11 and 12:

At some point, Ms. Lewinsky either discussed with me or gave me a list of the kinds of jobs she was interested in, although I do not know whether it was on Saturday, October 11, 1997. Records included in the OIC Referral indicate that Ms. Lewinsky visited the White House on October 11, 1997, App. at 2594, and I may have seen her on that day.

I do not believe I suggested to Ms. Lewinsky that Mr. Jordan might be able to assist her in her job search, and I understand that Ms. Lewinsky has stated that she asked me if Mr. Jordan could assist her in finding a job in New York. App. at 1079 (grand jury testimony of Ms. Lewinsky); App. at 1393 (7/27/98 FBI Form 302 Interview of Ms. Lewinsky); App. at 1461-62 (7/31/98 FBI Form 302 Interview of Ms. Lewinsky).

I speak to Mr. Jordan often, and I understand that records included in the OIC Referral indicate that he telephoned me shortly after Ms. Lewinsky left the White House complex. Supp. at 1836, 1839. I understand that Mr. Jordan testified

that he and I did not discuss Ms. Lewinsky during that call. Supp. at 1793-94 (grand jury testimony of Vernon Jordan).

13. Do you admit or deny that you discussed with Monica Lewinsky prior to December 17, 1997, a plan in which she would pretend to bring you papers with a work-related purpose, when in fact such papers had no work-related purpose, in order to conceal your relationship?

14. Do you admit or deny that you discussed with Monica Lewinsky prior to December 17, 1997, that Betty Currie should be the one to clear Ms. Lewinsky in to see you so that Ms. Lewinsky could say that she was visiting with Ms. Currie instead of with you?

15. Do you admit or deny that you discussed with Monica Lewinsky prior to December 17, 1997, that if either of you were questioned about the existence of your relationship you would deny its existence?

19. Do you admit or deny that on or about December 17, 1997, you suggested to Monica Lewinsky that she could say to anyone inquiring about her relationship with you that her visits to the Oval Office were for the purpose of visiting with Betty Currie or to deliver papers to you?

Response to Request Nos. 13, 14, 15, and 19:

I was asked essentially these same questions by OIC lawyers. I testified that Ms. Lewinsky and I "may have talked about what to do in a non-legal context at some point in the past, but I have no specific memory of that conversation." App. at 569. That continues to be my recollection today -- that is, any such conversation was not in connection with her status as a witness in the Jones v. Clinton case.

16. Do you admit or deny that on or about December 6, 1997, you learned that Monica Lewinsky's name was on a witness list in the case of *Jones v. Clinton*?

Response to Request No. 16:

As I stated in my August 17th grand jury testimony, I believe that I found out that Ms. Lewinsky's name was on a witness list in the Jones v. Clinton case late in the afternoon on the 6th of December, 1997. App. at 535.

17. Do you admit or deny that on or about December 17, 1997, you told Monica Lewinsky that her name was on the witness list in the case of *Jones v. Clinton*?

18. Do you admit or deny that on or about December 17, 1997, you suggested to Monica Lewinsky that the submission of an affidavit in the case of *Jones v. Clinton* might suffice to prevent her from having to testify personally in that case?

Response to Requests Nos. 17 and 18:

As I previously testified, I recall telephoning Ms. Lewinsky to tell her Ms. Currie's brother had died, and that call was in the middle of December. App. at 567. I do not recall other particulars of such a call, including whether we discussed the fact that her name was on the Jones v. Clinton witness list. As I stated in my August 17th grand jury testimony in response to essentially the same questions, it is "quite possible that that happened . . . . I don't have any memory of it, but I certainly wouldn't dispute that I might have said that [she was on the witness list]." App. at 567.

I recall that Ms. Lewinsky asked me at some time in December whether she might be able to get out of testifying in the Jones v. Clinton case because she knew nothing about Ms. Jones or the case. I told her I believed other witnesses had executed affidavits, and there was a chance they would not have to testify. As I stated in my August 17th grand jury testimony, "I felt strongly that . . . [Ms. Lewinsky] could execute an affidavit that would be factually truthful, that might get her out of having to testify." App. at 571. I never asked or encouraged Ms. Lewinsky to lie in her affidavit, as Ms. Lewinsky herself has confirmed. See App. at 718 (2/1/98 handwritten proffer of Ms. Lewinsky); see also App. at 1161 (grand jury testimony of Ms. Lewinsky).

19. For the Response to Request No. 19, see Response to Request No. 13 et al., supra.

20. Do you admit or deny that you gave false and misleading testimony under oath when you stated during your deposition in the case of *Jones v. Clinton* on January 17, 1998, that you did not know if Monica Lewinsky had been subpoenaed to testify in that case?

Response to Request No. 20:

It is evident from my testimony on pages 69 to 70 of the deposition that I did know on January 17, 1998, that Ms. Lewinsky had been subpoenaed in the Jones v. Clinton case. Ms. Jones' lawyer's question, "Did you talk to Mr. Lindsey about what action, if any, should be taken as a result of her being served with a subpoena?", and my response, "No," id. at 70, reflected my understanding that Ms. Lewinsky had been subpoenaed. That testimony was not false and misleading.

21. Do you admit or deny that you gave false and misleading testimony under oath when you stated before the grand jury on August 17, 1998, that you did know prior to January 17, 1998, that Monica Lewinsky had been subpoenaed to testify in the case of *Jones v. Clinton*?

Response to Request No. 21:

As my testimony on January 17 reflected, and as I testified on August 17, 1998, I knew prior to January 17, 1998, that Ms. Lewinsky had been subpoenaed to testify in Jones v. Clinton. App. at 487. That testimony was not false and misleading.

22. Do you admit or deny that on or about December 28, 1997, you had a discussion with Monica Lewinsky at the White House regarding her moving to New York?

Response to Request No. 22:

When I met with Ms. Lewinsky on December 28, 1997, I knew she was planning to move to New York, and we discussed her move.

23. Do you admit or deny that on or about December 28, 1997, you had a discussion with Monica Lewinsky at the White House in which you suggested to her that she move to New York soon because by moving to New York, the lawyers representing Paula Jones in the case of *Jones v. Clinton* may not contact her?

Response to Request No. 23:

Ms. Lewinsky had decided to move to New York well before the end of December 1997. By December 28, Ms. Lewinsky had been subpoenaed. I did not suggest that she could avoid testifying in the Jones v. Clinton case by moving to New York.

24. Do you admit or deny that on or about December 28, 1997, you had a discussion with Monica Lewinsky at the White House regarding gifts you had given to Ms. Lewinsky that were subpoenaed in the case of *Jones v. Clinton*?

25. Do you admit or deny that on or about December 28, 1997, you expressed concern to Monica Lewinsky about a hatpin you had given to her as a gift which had been subpoenaed in the case of *Jones v. Clinton*?

Response to Request Nos. 24 and 25:

As I told the grand jury, "Ms. Lewinsky said something to me like, what if they ask me about the gifts you've given me," App. at 495, but I do not know whether that conversation occurred on December 28, 1997, or earlier. Ibid. Whenever this conversation occurred, I testified, I told her "that if they asked her for gifts, she'd have to give them whatever she had . . . ." App. at 495. I simply was not concerned about the fact that I had given her gifts. See App. at 495-98. Indeed, I gave her additional gifts on December 28, 1997. I also told the grand jury that I do not recall Ms. Lewinsky telling me that the subpoena specifically called for a hat pin that I had given her. App. at 496.

26. Do you admit or deny that on or about December 28, 1997, you discussed with Betty Currie gifts previously given by you to Monica Lewinsky?

27. Do you admit or deny that on or about December 28, 1998, you requested, instructed, suggested to or otherwise discussed with Betty Currie that she take possession of gifts previously given to Monica Lewinsky by you?

Response to Request Nos. 26 and 27:

I do not recall any conversation with Ms. Currie on or about December 28, 1997, about gifts I had previously given to Ms. Lewinsky. I never told Ms.

Currie to take possession of gifts I had given Ms. Lewinsky; I understand Ms. Currie has stated that Ms. Lewinsky called Ms. Currie to ask her to hold a box. See Supp. at 531.

28. Do you admit or deny that you had a telephone conversation on January 6, 1998, with Vernon Jordan during which you discussed Monica Lewinsky's affidavit, yet to be filed, in the case of *Jones v. Clinton*?

Response to Request No. 28:

White House records included in the OIC Referral reflect that I spoke to Mr. Jordan on January 6, 1998. Supp. at 1886. I do not recall whether we discussed Ms. Lewinsky's affidavit during a telephone call on that date.

29. Do you admit or deny that you had knowledge of the fact that Monica Lewinsky executed for filing an affidavit in the case of *Jones v. Clinton* on January 7, 1998?

30. Do you admit or deny that on or about January 7, 1998, you had a discussion with Vernon Jordan in which he mentioned that Monica Lewinsky executed for filing an affidavit in the case of *Jones v. Clinton*?

Response to Request Nos. 29 and 30:

As I testified to the grand jury, "I believe that [Mr. Jordan] did notify us" when she signed her affidavit. App. at 525. While I do not recall the timing, as I told the grand jury, I have no reason to doubt Mr. Jordan's statement that he notified me about the affidavit around January 7, 1998. Ibid.

31. Do you admit or deny that on or about January 7, 1998, you had a discussion with Vernon Jordan in which he mentioned that he was assisting Monica Lewinsky in finding a job in New York?

Response to Request No. 31:

I told the grand jury that I was aware that Mr. Jordan was assisting Ms. Lewinsky in her job search in connection with her move to New York. App. at 526. I have no recollection as to whether Mr. Jordan discussed it with me on or about January 7, 1998.

32. Do you admit or deny that you viewed a copy of the affidavit executed by Monica Lewinsky on January 7, 1998, in the case of *Jones v. Clinton*, prior to your deposition in that case?

33. Do you admit or deny that you had knowledge that your counsel viewed a copy of the affidavit executed by Monica Lewinsky on January 7, 1998, in the case of *Jones v. Clinton*, prior to your deposition in that case?

Response to Request Nos. 32 and 33:

I do not believe I saw this affidavit before my deposition, although I cannot be absolutely sure. The record indicates that my counsel had seen the affidavit at some time prior to the deposition. See Dep. at 54.

34. Do you admit or deny that you had knowledge that any facts or assertions contained in the affidavit executed by Monica Lewinsky on January 7, 1998, in the case of *Jones v. Clinton* were not true?

40. Do you admit or deny that during your deposition in the case of *Jones v. Clinton* on January 17, 1998, you affirmed that the facts or assertions stated in the affidavit executed by Monica Lewinsky on January 7, 1998, were true?

Response to Request Nos. 34 and 40:

I was asked at my deposition in January about two paragraphs of Ms. Lewinsky's affidavit. With respect to Paragraph 6, I explained the extent to which I was able to attest to its accuracy. Dep. at 202-03.

With respect to Paragraph 8, I stated in my deposition that it was true. Dep. at 204. In my August 17th grand jury testimony, I sought to explain the basis for that deposition answer: "I believe at the time that she filled out this affidavit, if she believed that the definition of sexual relationship was two people having intercourse, then this is accurate." App. at 473.

35. Do you admit or deny that you viewed a copy of the affidavit executed by Monica Lewinsky on January 7, 1998, in the case of *Jones v. Clinton*, at your deposition in that case on January 17, 1998?

36. Do you admit or deny that you had knowledge that your counsel viewed a copy of the affidavit executed by Monica Lewinsky on January 7, 1998, in the case of *Jones v. Clinton*, at your deposition in that case on January 17, 1998?

Response to Request Nos. 35 and 36:

I know that Mr. Bennett saw Ms. Lewinsky's affidavit during the deposition because he read portions of it aloud at the deposition. See Dep. at 202. I do not recall whether I saw a copy of Ms. Lewinsky's affidavit during the deposition.

37. Do you admit or deny that on or about January 9, 1998, you received a message from Vernon Jordan indicating that Monica Lewinsky had received a job offer in New York?

Response to Request No. 37:

At some time, I learned that Ms. Lewinsky had received a job offer in New York. However, I do not recall whether I first learned it in a message from Mr. Jordan or whether I learned it on that date.

38. Do you admit or deny that between January 9, 1998, and January 15, 1998, you had a conversation with Erskine Bowles in the Oval Office in which you stated that Monica Lewinsky received a job offer and had listed John Hilley as a reference?

39. Do you admit or deny that you asked Erskine Bowles if he would ask John Hilley to give Ms. Lewinsky a positive job recommendation?

Response to Request Nos. 38 and 39:

As I testified to the grand jury, I recall at some point talking to Mr. Bowles "about whether Monica Lewinsky could get a recommendation that was not negative from the Legislative Affairs Office," or that "was at least neutral," although I am not certain of the date of the conversation. App. at 562-64. To suggest that I told Mr. Bowles that Ms. Lewinsky had received a job offer and had listed John Hilley as a reference is, as I testified, a "little bit" inconsistent with my memory. App. at 564. It is possible, as I also indicated, that she had identified Mr. Hilley as her supervisor on her resume and in that respect had already listed him as a reference. Ibid.

40. For the Response to Request No. 40, see Response to Request No. 34, et al., supra.

41. As to each, do you admit or deny that you gave the following gifts to Monica Lewinsky at any time in the past?

a. A lithograph
b. A hatpin
c. A large "Black Dog" canvas bag
d. A large "Rockettes" blanket
e. A pin of the New York skyline
f. A box of "cherry chocolates"
g. A pair of novelty sunglasses
h. A stuffed animal from the "Black Dog"
i. A marble bear's head
j. A London pin
k. A shamrock pin
l. An Annie Lennox compact disc
m. Davidoff cigars

Response to Request No. 41:

In my deposition in the Jones case, I testified that I "certainly . . . could have" given Ms. Lewinsky a hat pin and that I gave her "something" from the Black Dog. Dep. at 75-76. In my grand jury testimony, I indicated that in late December 1997, I gave Ms. Lewinsky a Canadian marble bear's head carving, a Rockettes blanket, some kind of pin, and a bag (perhaps from the Black Dog) to hold these objects. App. at 484-487. I also stated that I might have given her such gifts as a box of candy and sunglasses, although I did not recall doing so; and I specifically testified that I had given Ms. Lewinsky gifts on other occasions. App. at 487. I do not remember giving her the other gifts listed in Question 41, although I might have. As I have previously testified, I receive a very large number of gifts from many different people, sometimes several at a time. I also give a very large number of gifts. I gave Ms. Lewinsky gifts, some of which I remember and some of which I do not.

42. Do you admit or deny that when asked on January 17, 1998, in your deposition in the case of *Jones v. Clinton* if you had ever given gifts to Monica Lewinsky, you stated that you did not recall, even though you actually had knowledge of giving her gifts in addition to gifts from the "Black Dog"?

Response to Request No. 42:

In my grand jury testimony, I was asked about this same statement. I explained that my full response was "I don't recall. Do you know what they were?" By that answer, I did not mean to suggest that I did not recall giving gifts; rather, I meant that I did not recall what the gifts were, and I asked for reminders. See App. at 502-03.

43. Do you admit or deny that you gave false and misleading testimony under oath in your deposition in the case of *Jones v. Clinton* when you responded "once or twice" to the question "has Monica Lewinsky ever given you any gifts?"

Response to Request No. 43:

My testimony was not false and misleading. As I have testified previously, I give and receive numerous gifts. Before my January 17, 1998, deposition, I had not focused on the precise number of gifts Ms. Lewinsky had given me. App. at 495-98. My deposition testimony made clear that Ms. Lewinsky had given me gifts; at the deposition, I recalled "a book or two" and a tie. Dep. at 77. At the time, those were the gifts I recalled. In response to OIC inquiries, after I had had a chance to search my memory and refresh my recollection, I was able to be more responsive. However, as my counsel have informed the OIC, in light of the very large number of gifts I receive, there might still be gifts from Ms. Lewinsky that I have not identified.

44. Do you admit or deny that on January 17, 1998, at or about 5:38 p.m., after the conclusion of your deposition in the case of *Jones v. Clinton*, you telephoned Vernon Jordan at his home?

Response to Request No. 44:

I speak to Mr. Jordan frequently, so I cannot remember specific times and dates. According to White House records included in the OIC Referral, I telephoned Mr. Jordan's residence on January 17, 1998, at or about 5:38 p.m. App. at 2876.

45. Do you admit or deny that on January 17, 1998, at or about 7:02 p.m., after the conclusion of your deposition in the case of *Jones v. Clinton*, you telephoned Betty Currie at her home?

46. Do you admit or deny that on January 17, 1998, at or about 7:02 p.m., after the conclusion of your deposition in the case of *Jones v. Clinton*, you telephoned Vernon Jordan at his office?

47. Do you admit or deny that on January 17, 1998, at or about 7:13 p.m., after the conclusion of your deposition in the case of *Jones v. Clinton*, you telephoned Betty Currie at her home and asked her to meet with you the next day, Sunday, January 18, 1998?

Response to Request Nos. 45, 46 and 47:

According to White House records included in the OIC Referral, I placed a telephone call to Ms. Currie at her residence at 7:02 p.m. and spoke to her at or about 7:13 p.m. App. at 2877. I recall that when I spoke to her that evening, I asked if she could meet with me the following day. According to White House records included in the OIC Referral, I telephoned Mr. Jordan's office on January 17, 1998, at or about 7:02 p.m. Ibid.

48. Do you admit or deny that on January 18, 1998, at or about 6:11 a.m., you learned of the existence of tapes of conversations between Monica Lewinsky and Linda Tripp recorded by Linda Tripp?

Response to Request No. 48:

I did not know on January 18, 1998 that tapes existed of conversations between Ms. Lewinsky and Ms. Tripp recorded by Ms. Tripp. At some point on Sunday, January 18, 1998, I knew about the Drudge Report. I understand that, while the Report talked about tapes of phone conversations, it did not identify Ms. Lewinsky by name and did not mention Ms. Tripp at all. The Report did not state who the parties to the conversations were or who taped the conversations.

49. Do you admit or deny that on January 18, 1998, at or about 12:50 p.m., you telephoned Vernon Jordan at his home?

Response to Request No. 49:

According to White House records included in the OIC Referral, I telephoned Mr. Jordan's residence on January 18, 1998, at or about 12:50 p.m. App. at 2878.

50. Do you admit or deny that on January 18, 1998, at or about 1:11 p.m., you telephoned Betty Currie at her home?

Response to Request No. 50:

According to White House records included in the OIC Referral, I telephoned Ms. Currie's residence on January 18, 1998, at or about 1:11 p.m. App. at 2878.

51. Do you admit or deny that on January 18, 1998, at or about 2:55 p.m., you received a telephone call from Vernon Jordan?

Response to Request No. 51:

According to White House records included in the OIC Referral, Mr. Jordan telephoned me from his residence on January 18, 1998, at or about 2:55 p.m. App. at 2879.

52. Do you admit or deny that on January 18, 1998, at or about 5:00 p.m., you had a meeting with Betty Currie at which you made statements similar to any of the following regarding your relationship with Monica Lewinsky?

a. "You were always there when she was there, right? We were never really alone."
b. "You could see and hear everything."
c. "Monica came on to me, and I never touched her right?"
d. "She wanted to have sex with me and I couldn't do that."

Response to Request No. 52:

When I met with Ms. Currie, I believe that I asked her certain questions, in an effort to get as much information as quickly as I could, and made certain statements, although I do not remember exactly what I said. See App. at 508.

Some time later, I learned that the Office of Independent Counsel was involved and that Ms. Currie was going to have to testify before the grand jury. After learning this, I stated in my grand jury testimony, I told Ms. Currie, "Just relax, go in there and tell the truth." App. at 591.

53. Do you admit or deny that you had a conversation with Betty Currie within several days of January 18, 1998, in which you made statements similar to any of the following regarding your relationship with Monica Lewinsky?

a. "You were always there when she was there, right? We were never really alone."
b. "You could see and hear everything."
c. "Monica came on to me, and I never touched her right?"
d. "She wanted to have sex with me and I couldn't do that."

Response to Request No. 53:

I previously told the grand jury that, "I don't know that I" had another conversation with Ms. Currie within several days of January 18, 1998, in which I made statements similar to those quoted above. "I remember having this [conversation] one time." App. at 592. I further explained, "I do not remember how many times I talked to Betty Currie or when. I don't. I can't possibly remember that. I do remember, when I first heard about this story breaking, trying to ascertain what the facts were, trying to ascertain what Betty's perception was. I remember that I was highly agitated, understandably, I think." App. at 593.

I understand that Ms. Currie has said a second conversation occurred the next day that I was in the White House (when she was), Supp. at 535-36, which would have been Tuesday, January 20, before I knew about the grand jury investigation.

54. Do you admit or deny that on January 18, 1998, at or about 11:02 p.m., you telephoned Betty Currie at her home?

Response to Request No. 54:

According to White House records included in the OIC Referral, I called Ms. Currie's residence on January 18, 1998, at or about 11:02 p.m. App. at 2881.

55. Do you admit or deny that on Monday, January 19, 1998, at or about 8:50 a.m., you telephoned Betty Currie at her home?

Response to Request No. 55:

According to White House records included in the OIC Referral, I called Ms. Currie's residence on January 19, 1998, at or about 8:50 a.m. App. at 3147.

56. Do you admit or deny that on Monday, January 19, 1998, at or about 8:56 a.m., you telephoned Vernon Jordan at his home?

Response to Request No. 56:

According to White House records included in the OIC Referral, I called Mr. Jordan's residence on January 19, 1998, at or about 8:56 a.m. App. at 2864.

57. Do you admit or deny that on Monday, January 19, 1998, at or about 10:58 a.m., you telephoned Vernon Jordan at his office?

Response to Request No. 57:

According to White House records included in the OIC Referral, I called Mr. Jordan's office on January 19, 1998, at or about 10:58 a.m. App. at 2883.

58. Do you admit or deny that on Monday, January 19, 1998, at or about 1:45 p.m., you telephoned Betty Currie at her home?

Response to Request No. 58:

According to White House records included in the OIC Referral, I called Ms. Currie's residence on January 19, 1998, at or about 1:45 p.m. App. at 2883.

59. Do you admit or deny that on Monday, January 19, 1998, at or about 2:44 p.m., you met with individuals including Vernon Jordan, Erskine Bowles, Bruce Lindsey, Cheryl Mills, Charles Ruff, and Rahm Emanuel?

60. Do you admit or deny that on Monday, January 19, 1998, at or about 2:44 p.m., at any meeting with Vernon Jordan, Erskine Bowles, Bruce Lindsey, Cheryl Mills, Charles Ruff, Rahm Emanuel, and others, you

discussed the existence of tapes of conversations between Monica Lewinsky and Linda Tripp recorded by Linda Tripp, or any other matter related to Monica Lewinsky?

Response to Request Nos. 59 and 60:

I do not believe such a meeting occurred. White House records included in the OIC Referral indicate that Mr. Jordan entered the White House complex that day at 2:44 p.m. Supp. at 1995. According to Mr. Jordan's testimony, he and I met alone in the Oval Office for about 15 minutes. Supp. at 1763 (grand jury testimony of Vernon Jordan).

I understand that Mr. Jordan testified that we discussed Ms. Lewinsky at that meeting and also the Drudge Report, in addition to other matters. Supp. at 1763. Please also see my Response to Request No. 48, supra.

61. Do you admit or deny that on Monday, January 19, 1998, at or about 5:56 p.m., you telephoned Vernon Jordan at his office?

Response to Request No. 61:

According to White House records included in the OIC Referral, I called Mr. Jordan's office on January 19, 1998, at or about 5:56 p.m. App. at 2883.

62. Do you admit or deny that on January 21, 1998, the day the Monica Lewinsky story appeared for the first time in the *Washington Post*, you had a conversation with Sidney Blumenthal, in which you stated that you rebuffed alleged advances from Monica Lewinsky and in which you made a statement similar to the following?: "Monica Lewinsky came at me and made a sexual demand on me."

63. Do you admit or deny that on January 21, 1998, the day the Monica Lewinsky story appeared for the first time in the *Washington Post*, you had a conversation with Sidney Blumenthal, in which you made a statement similar to the following in response to a question about your conduct with Monica Lewinsky?: "I haven't done anything wrong."

64. Do you admit or deny that on January 21, 1998, the day the Monica Lewinsky story appeared for the first time in the *Washington Post*, you had a conversation with Erskine Bowles, Sylvia Matthews and John Podesta, in which you made a statement similar to the

following?: "I want you to know I did not have sexual relationships with this woman Monica Lewinsky. I did not ask anybody to lie. And when the facts come out, you'll understand."

65. Do you admit or deny than on or about January 23, 1998, you had a conversation with John Podesta, in which you stated that you had never had an affair with Monica Lewinsky?

66. Do you admit or deny that on or about January 23, 1998, you had a conversation with John Podesta, in which you stated that you were not alone with Monica Lewinsky in the Oval Office, and that Betty Currie was either in your presence or outside your office with the door open while you were visiting with Monica Lewinsky?

67. Do you admit or deny that on or about January 26, 1998, you had a conversation with Harold Ickes, in which you made statements to the effect that you did not have an affair with Monica Lewinsky?

68. Do you admit or deny that on or about January 26, 1998, you had a conversation with Harold Ickes, in which you made statements to the effect that you had not asked anyone to change their story, suborn perjury or obstruct justice if called to testify or otherwise respond to a request for information from the Office of Independent Counsel or in any other legal proceeding?

Responses to Requests Nos. 62 - 68:

As I have previously acknowledged, I did not want my family, friends, or colleagues to know the full nature of my relationship with Ms. Lewinsky. In the days following the January 21, 1998, Washington Post article, I misled people about this relationship. I have repeatedly apologized for doing so.

69. Do you admit or deny that on or about January 21, 1998, you and Richard "Dick" Morris discussed the possibility of commissioning a poll to determine public opinion following the *Washington Post* story regarding the Monica Lewinsky matter?

70. Do you admit or deny that you had a later conversation with Richard "Dick" Morris in which he stated that the polling results regarding the Monica Lewinsky matter suggested that the American people would forgive you for adultery but not for perjury or obstruction of justice?

71. Do you admit or deny that you responded to Richard "Dick" Morris's explanation of these polling results by making a statement similar to the following: "[w]ell, we just have to win, then"?

Response to Request Nos. 69, 70 and 71:

At some point after the OIC investigation became public, Dick Morris volunteered to conduct a poll on the charges reported in the press. He later called back. What I recall is that he said the public was most concerned about obstruction of justice or subornation of perjury. I do not recall saying, "Well, we just have to win then."

72. Do you admit or deny the past or present existence of or the past or present direct or indirect employment of individuals, other than counsel representing you, whose duties include making contact with or gathering information about witnesses or potential witnesses in any judicial proceeding related to any matter in which you are or could be involved?

Response to Request No. 72:

I cannot respond to this inquiry because of the vagueness of its terms (e.g., "indirect," "potential," "could be involved"). To the extent it may be interpreted to apply to individuals assisting counsel, please see my responses to Request Nos. 73-75, infra. To the extent the inquiry addresses specific individuals, as in Request Nos. 73-75, infra, I have responded and stand ready to respond to any other specific inquiries.

73. Do you admit or deny having knowledge that Terry Lenzner was contacted or employed to make contact with or gather information about witnesses or potential witnesses in any judicial proceeding related to any matter in which you are or could be involved?

Response to Request No. 73:

My counsel stated publicly on February 24, 1998, that Mr. Terry Lenzner and his firm have been retained since April 1994 by two private law firms that represent me. It is commonplace for legal counsel to retain such firms to perform legal and appropriate tasks to assist in the defense of clients. See also Response to No. 72.

74. Do you admit or deny having knowledge that Jack Palladino was contacted or employed to make contact with or gather information about witnesses or potential witnesses in any judicial proceeding related to any matter in which you are or could be involved?

Response to Request No. 74:

My understanding is that during the 1992 Presidential Campaign, Mr. Jack Palladino was retained to assist legal counsel for me and the Campaign on a variety of matters arising during the Campaign. See also Response to No. 72.

75. Do you admit or deny having knowledge that Betsy Wright was contacted or employed to make contact with or gather information about witnesses or potential witnesses in any judicial proceeding related to any matter in which you are or could be involved?

Response to Request No. 75:

Ms. Betsey Wright was my long-time chief of staff when I was Governor of Arkansas, and she remains a good friend and trusted advisor. Because of her great knowledge of Arkansas, from time to time my legal counsel and I have consulted with her on a wide range of matters. See also Response to No. 72.

76. Do you admit or deny that you made false and misleading public statements in response to questions asked on or about January 21, 1998, in an interview with Roll Call, when you stated "Well, let me say, the relationship was not improper, and I think that's important enough to say. But because the investigation is going on and because I don't know what is out – what's going to be asked of me, I think I need to cooperate, answer the questions, but I think it's important for me to make it clear what is not. And then, at the appropriate time, I'll try to answer what is. But let me answer – it is not an improper relationship and I know what the word means."?

Response to Request No. 76:

The tape of this interview reflects that in fact I said: "Well, let me say the relationship's not improper and I think that's important enough to say . . ." With that revision, the quoted words accurately reflect my remarks. As I stated in Response to Request Nos. 62 to 68, in the days following the January 21, 1998, disclosures, I misled people about this relationship, for which I have apologized.

77. Do you admit or deny that you made false and misleading public statements in response to questions asked on or about January 21, 1998, in the Oval Office during a photo opportunity, when you stated "Now, there are a lot of other questions that are, I think, very legitimate. You have a right to ask them; you and the American people have a right to get answers. We are working very hard to comply and get all the requests for information up here, and we will give you as many answers as we can, as soon as we can, at the appropriate time, consistent with our obligation to also cooperate with the investigations. And that's not a dodge, that's really [what] I've – I've talked with [our] people. I want to do that. I'd like for you to have more rather than less, sooner rather than later. So we'll work through it as quickly as we can and get all those questions out there to you."?

Response to Request No. 77:

I made this statement (as corrected), according to a transcript of a January 22, 1998 photo opportunity in the Oval Office. This statement was not false and misleading. It accurately represented my thinking.

78. Do you admit or deny that you discussed with Harry Thomasson, prior to making public statements in response to questions asked by the press in January, 1998, relating to your relationship with Monica Lewinsky, what such statements should be or how they should be communicated?

Response to Request No. 78:

Mr. Thomason was a guest at the White House in January 1998, and I recall his encouraging me to state my denial forcefully.

79. Do you admit or deny that you made a false and misleading public statement in response to a question asked on or about January 26, 1998, when you stated "But I want to say one thing to the American people. I want you to listen to me. I'm going to say this again. I did not have sexual relations with that woman, Ms. Lewinsky?"

Response to Request No. 79:

I made this statement on January 26, 1998, although not in response to any question. In referring to "sexual relations", I was referring to sexual

intercourse. See also App. at 475. As I stated in Response to Request Nos. 62 to 68, in the days following the January 21, 1998, disclosures, answers like this misled people about this relationship, for which I have apologized.

80. Do you admit or deny that you made a false and misleading public statement in response to a question asked on or about January 26, 1998, when you stated "...I never told anybody to lie, not a single time. Never?"

Response to Request No. 80:

This statement was truthful: I did not tell Ms. Lewinsky to lie, and I did not tell anybody to lie about my relationship with Ms. Lewinsky. I understand that Ms. Lewinsky also has stated that I never asked or encouraged her to lie. See App. at 718 (2/1/98 handwritten proffer of Ms. Lewinsky); see also App. at 1161 (grand jury testimony of Ms. Lewinsky).

81. Do you admit or deny that you directed or instructed Bruce Lindsey, Sidney Blumenthal, Nancy Hernreich and Lanny Breuer to invoke executive privilege before a grand jury empanelled as part of a judicial proceeding by the United States District Court for the District of Columbia Circuit in 1998?

Response to Request No. 81:

On the recommendation of Charles Ruff, Counsel to the President, I authorized Mr. Ruff to assert the presidential communications privilege (which is one aspect of executive privilege) with respect to questions that might be asked of witnesses called to testify before the grand jury to the extent that those questions sought disclosure of matters protected by that privilege. Thereafter, I understand that the presidential communications privilege was asserted as to certain questions asked of Sidney Blumenthal and Nancy Hernreich. Further, I understand that, as to Mr. Blumenthal and Ms. Hernreich, all claims of official privilege were subsequently withdrawn and they testified fully on several occasions before the grand jury.

Mr. Lindsey and Mr. Breuer testified at length before the grand jury about a wide range of matters, but declined, on the advice of the White House Counsel, to answer certain questions that sought disclosure of discussions that they had with me and my senior advisors concerning, among other things, their legal advice as to the assertion of executive privilege. White House Counsel advised Mr. Lindsey and Mr. Breuer that these communications were protected by the attorney-

client privilege, as well as executive privilege. Mr. Lindsey also asserted my personal attorney-client privilege as to certain questions relating to his role as an intermediary between me and my personal counsel in the Jones v. Clinton case, a privilege that was upheld by the federal appeals court in the District of Columbia.

William J. Clinton
WILLIAM JEFFERSON CLINTON

Subscribed and sworn to before me
this 27th day of November, 1998.

Moira K. Ricketts
Notary Public
MOIRA K. RICKETTS
NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires February 28, 2003

[EXHIBIT 19]

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1 full responsibility for it. It wasn't her fault, it was
2 mine. I do not believe that I violated the definition of
3 sexual relations I was given by directly touching those parts
4 of her body with the intent to arouse or gratify. And that's
5 all I have to say.
6 I think, for the rest, you know, you know what the
7 evidence is and it doesn't affect that statement.
8 Q Is it possible or impossible that your semen is on
9 a dress belonging to Ms. Lewinsky?
10 A I have nothing to add to my statement about it,
11 sir. You, you know whether -- you know what the facts are.
12 There's no point in a hypothetical.
13 Q Don't you know what the facts are also, Mr.
14 President?
15 A I have nothing to add to my statement, sir.
16 Q Getting back to the conversation you had with Mrs.
17 Currie on January 18th, you told her -- if she testified that
18 you told her, Monica came on to me and I never touched her,
19 you did, in fact, of course, touch Ms. Lewinsky, isn't that
20 right, in a physically intimate way?
21 A Now, I've testified about that. And that's one of
22 those questions that I believe is answered by the statement
23 that I made.
24 Q What was your purpose in making these statements to
25 Mrs. Currie, if they weren't for the purpose to try to

Clinton Grand Jury (8/17/98

[EXHIBIT 20]

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1 Do you recall meeting with him around January 23rd,
2 1998, a Friday a.m. in your study, two days after The
3 Washington Post story, and extremely explicitly telling him
4 that you didn't have, engage in any kind of sex, in any way,
5 shape or form, with Monica Lewinsky, including oral sex?
6 A I meet with John Podesta almost every day. I meet
7 with a number of people. The only thing I -- what happened
8 in the couple of days after what you did was revealed, is a
9 blizzard to me. The only thing I recall is that I met with
10 certain people, and a few of them I said I didn't have sex
11 with Monica Lewinsky, or I didn't have an affair with her or
12 something like that. I had a very careful thing I said, and
13 I tried not to say anything else.
14 And it might be that John Podesta was one of them.
15 But I do not remember this specific meeting about which you
16 asked, or the specific comments to which you refer. And --
17 Q You don't remember --
18 A -- seven months ago, I'd have no way to remember,
19 no.
20 Q You don't remember denying any kind of sex in any
21 way, shape or form, and including oral sex, correct?
22 A I remember that I issued a number of denials to
23 people that I thought needed to hear them, but I tried to be
24 careful and to be accurate, and I do not remember what I said
25 to John Podesta.

Clinton Grand Jury (8/17/98)

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1 sexual relationship with Monica Lewinsky to those
2 individuals?
3 A I recall telling a number of those people that I
4 didn't have, either I didn't have an affair with Monica
5 Lewinsky or didn't have sex with her. And I believe, sir,
6 that -- you'll have to ask them what they thought. But I was
7 using those terms in the normal way people use them. You'll
8 have to ask them what they thought I was saying.
9 Q If they testified that you denied sexual relations
10 or relationship with Monica Lewinsky, or if they told us that
11 you denied that, do you have any reason to doubt them, in the
12 days after the story broke; do you have any reason to doubt
13 them?
14 A No. The -- let me say this. It's no secret to
15 anybody that I hoped that this relationship would never
16 become public. It's a matter of fact that it had been many,
17 many months since there had been anything improper about it,
18 in terms of improper contact. I --
19 Q Did you deny it to them or not, Mr. President?
20 A Let me finish. So, what -- I did not want to
21 mislead my friends, but I wanted to find language where I
22 could say that. I also, frankly, did not want to turn any of
23 them into witnesses, because I -- and, sure enough, they all
24 became witnesses.
25 Q Well, you knew they might be --

1 A And so --

2 Q -- witnesses, didn't you?

3 A And so I said to them things that were true about

4 this relationship. That I used -- in the language I used, I

5 said, there's nothing going on between us. That was true. I

6 said, I have not had sex with her as I defined it. That was

7 true. And did I hope that I would never have to be here on

8 this day giving this testimony? Of course.

9 But I also didn't want to do anything to complicate

10 this matter further. So, I said things that were true. They

11 may have been misleading, and if they were I have to take

12 responsibility for it, and I'm sorry.

13 Q It may have been misleading, sir, and you knew

14 though, after January 21st when the Post article broke and

15 said that Judge Starr was looking into this, you knew that

16 they might be witnesses. You knew that they might be called

17 into a grand jury, didn't you?

18 A That's right. I think I was quite careful what I

19 said after that. I may have said something to all these

20 people to that effect, but I'll also -- whenever anybody

21 asked me any details, I said, look, I don't want you to be a

22 witness or I turn you into a witness or give you information

23 that could get you in trouble. I just wouldn't talk. I, by

24 and large, didn't talk to people about this.

25 Q If all of these people -- let's leave out Mrs.

[EXHIBIT 21]

William Jefferson Clinton

1 opposed to it, based on anything I knew, anyway.
2 Q. Well, have you ever given any gifts to
3 Monica Lewinsky?
4 A. I don't recall. Do you know what they
5 were?
6 Q. A hat pin?
7 A. I don't, I don't remember. But I
8 certainly, I could have.
849-DC-00000426
9 Q. A book about Walt Whitman?
10 A. I give -- let me just say, I give people a
11 lot of gifts, and when people are around I give a lot
12 of things I have at the White House away, so I could
13 have given her a gift, but I don't remember a
14 specific gift.
15 Q. Do you remember giving her a gold broach?
16 A. No.
17 Q. Do you remember giving her an item that had
18 been purchased from The Black Dog store at Martha's
19 Vineyard?
20 A. I do remember that, because when I went on
21 vacation, Betty said that, asked me if I was going to
22 bring some stuff back from The Black Dog, and she
23 said Monica loved, liked that stuff and would like to
24 have a a piece of it, and I did a lot of Christmas
25 shopping from The Black Dog, and I bought a lot of

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Clinton Deposition (1/17/98)

1 things for a lot of people, and I gave Betty a couple
2 of the pieces, and she gave I think something to
3 Monica and something to some of the other girls who
4 worked in the office. I remember that because Betty
5 mentioned it to me.
6 Q. What in particular was given to Monica?
7 A. I don't remember. I got a whole bag full
8 of things that I bought at The Black Dog. I went
9 there, they gave me some things, and I went and
10 purchased a lot at their store, and when I came back
11 I gave a, a big block of it to Betty, and I don't
12 know what she did with it all or who got what.
13 Q. But while you were in the store you did
14 pick out something for Monica, correct?
15 A. While I was in the store -- first of all,
16 The Black Dog sent me a selection of things. Then I
17 went to the store and I bought some other things,
18 t-shirts, sweatshirts, shirts. Then when I got back
19 home, I took out a thing or two that I wanted to
20 keep, and I took out a thing or two I wanted to give
21 to some other people, and I gave the rest of it to
22 Betty and she distributed it. That's what I remember
23 doing.
24 Q. Has Monica Lewinsky ever given you any
25 gifts? 849-DC-00000427

William Jefferson Clinton

1 A. Once or twice. I think she's given me a
2 book or two.
3 Q. Did she give you a silver cigar box?
4 A. No. 849-DC-00000428
5 Q. Did she give you a tie?
6 A. Yes, she has given me a tie before. I
7 believe that's right. Now, as I said, let me remind
8 you, normally when I get these ties, I get ties, you
9 know, together, and then they're given to me later,
10 but I believe that she has given me a tie.
11 Q. Well, Mr. President, it's my understanding
12 that Monica Lewinsky has made statements to people,
13 and I'd like for you --
14 MR. BRISTOW: Object, object to the form of
15 the question. Counsel shouldn't testify, and when
16 you start out like that, it's obviously counsel
17 testifying. I don't think that's proper.
18 MR. BENNETT: Let me add to that, Your
19 Honor wouldn't permit me to make reference to this
20 affidavit, and I respect your ruling.
21 JUDGE WRIGHT: Let me, let me just make my
22 ruling. It is not appropriate for Counsel to make
23 comments about, about these things. I don't know
24 whether he was trying to do this to establish a good
25 faith basis for the next question or not, but it is

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[EXHIBIT 22]

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1 ever sent any letters from the Pentagon to Betty
2 Currie in the White House?
3 A. I don't know. You'd have to ask Betty
4 about that. It wouldn't surprise me but you'd have
5 to ask her.
6 Q. Did Betty Currie ever bring to you a
7 personal message from Monica Lewinsky that had been
8 delivered to Betty?
9 A. On a couple of occasions, Christmas card,
10 birthday card, like that.
11 Q. Do you remember anything that was written
12 in any of those?
13 A. No. Sometimes, you know, just either small
14 talk or happy birthday or sometimes, you know, a
15 suggestion about how to get more young people
16 involved in some project I was working on. Nothing
17 remarkable. I don't remember anything particular
18 about it.
19 Q. Are those kept somewhere?
20 A. I don't think so.
21 Q. What did you do with them after you were
22 done with them?
23 A. I think I discarded them. I normally do.
24 People send me personal notes and stuff like that. I
25 just throw them away.

849-DC-00000413

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1 up to us?
2 MR. BENNETT: I've arranged for lunch, Your
3 Honor. We can have it -- I don't know if it's there
4 right now. We were thinking twelve-thirty, but
5 whatever --
6 JUDGE WRIGHT: That's great. That's
7 perfect.
8 MR. BENNETT: And we have a room set aside
9 for you and your law clerk where you can eat
10 privately, and we have a separate room for their side
11 of the table, and our side.
12 JUDGE WRIGHT: All right, let's take a ten
13 minute break. 849-DC-00000403
14 (Short recess.)
15 JUDGE WRIGHT: All right, Mr. Fisher, you
16 may resume.
17 MR. FISHER: Thank you, Your Honor.
18 Q. Mr. President, before the break, we were
19 talking about Monica Lewinsky. At any time were you
20 and Monica Lewinsky together alone in the Oval
21 Office?
22 A. I don't recall, but as I said, when she
23 worked at the legislative affairs office, they always
24 had somebody there on the weekends. I typically
25 worked some on the weekends. Sometimes they'd bring

1 me things on the weekends. She -- it seems to me she
2 brought things to me once or twice on the weekends.
3 In that case, whatever time she would be in there,
4 drop it off, exchange a few words and go, she was
5 there. I don't have any specific recollections of
6 what the issues were, what was going on, but when the
7 Congress is there, we're working all the time, and
8 typically I would do some work on one of the days of
9 the weekends in the afternoon.
10 Q. So I understand, your testimony is that it
11 was possible, then, that you were alone with her, but
12 you have no specific recollection of that ever
13 happening?
14 A. Yes, that's correct. It's possible that
15 she, in, while she was working there, brought
16 something to me and that at the time she brought it
17 to me, she was the only person there. That's
18 possible.
19 Q. Did it ever happen that you and she went
20 down the hallway from the Oval Office to the private
21 kitchen? 849-DC-00000404
22 MR. BENNETT: Your Honor, excuse me, Mr.
23 President, I need some guidance from the Court at
24 this point. I'm going to object to the innuendo.
25 I'm afraid, as I say, that this will leak. I don't

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1 kitchen, it's a little cubbyhole, and these guys keep
2 the door open. They come and go at will. Now that's
3 the factual background here.
4 Now, to go back to your question, my
5 recollection is that, that at some point during the
6 government shutdown, when Ms. Lewinsky was still an
7 intern but was working the chief staff's office
8 because all the employees had to go home, that she
9 was back there with a pizza that she brought to me
10 and to others. I do not believe she was there alone,
11 however. I don't think she was. And my recollection
12 is that on a couple of occasions after that she was
13 there but my secretary, Betty Currie, was there with
14 her. She and Betty are friends. That's my, that's
15 my recollection. And I have no other recollection of
16 that.
17 MR. FISHER: While I appreciate all of that
18 information, for the record I'm going to object.
19 It's nonresponsive as to the entire answer up to the
20 point where the deponent, said, "Now back to your
21 question."
22 Q. At any time were you and Monica Lewinsky
23 alone in the hallway between the Oval Office and this
24 kitchen area? 849-DC-00000409
25 A. I don't believe so, unless we were walking

[EXHIBIT 23]

William Jefferson Clinton

1 back to the back dining room with the pizza. I just.
2 I don't remember. I don't believe we were alone in
3 the hallway, no.
4 Q. Are there doors at both ends of the
5 hallway?
6 A. They are, and they're always open.
7 Q. At any time have you and Monica Lewinsky
8 ever been alone together in any room in the White
9 House?
10 A. I think I testified to that earlier. I
11 think that there is a, it is -- I have no specific
12 recollection, but it seems to me that she was on duty
13 on a couple of occasions working for the legislative
14 affairs office and brought me some things to sign,
15 something on the weekend. That's -- I have a general
16 memory of that.
17 Q. Do you remember anything that was said in
18 any of those meetings?
19 A. No. You know, we just have conversation, I
20 don't remember.
21 Q. How long has Betty Currie been your
22 secretary?
23 A. Since I've been President. 849-DC-00000410
24 Q. Did she also work with you in Arkansas?
25 A. Not when I was Governor. She worked in the

[EXHIBIT 24]

William Jefferson Clinton

1 inappropriate for counsel to comment, so I will
2 sustain the objection.
3 MR. FISHER: I understand.
4 Q. Did you have an extramarital sexual affair
5 with Monica Lewinsky?
6 A. No. 849-DC-00000429
7 Q. If she told someone that she had a sexual
8 affair with you beginning in November of 1995, would
9 that be a lie?
10 A. It's certainly not the truth. It would not
11 be the truth.
12 Q. I think I used the term "sexual affair."
13 And so the record is completely clear, have you ever
14 had sexual relations with Monica Lewinsky, as that
15 term is defined in Deposition Exhibit 1, as modified
16 by the Court?
17 MR. BENNETT: I object because I don't know
18 that he can remember --
19 JUDGE WRIGHT: Well, it's real short. He
20 can -- I will permit the question and you may show
21 the witness definition number one.
22 A. I have never had sexual relations with
23 Monica Lewinsky. I've never had an affair with her.
24 Q. Have you ever had a conversation with
25 Vernon Jordan in which Monica Lewinsky was

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1 me things on the weekends. She -- it seems to me she
2 brought things to me once or twice on the weekends.
3 In that case, whatever time she would be in there,
4 drop it off, exchange a few words and go, she was
5 there. I don't have any specific recollections of
6 what the issues were, what was going on, but when the
7 Congress is there, we're working all the time, and
8 typically I would do some work on one of the days of
9 the weekends in the afternoon.
10 Q. So I understand, your testimony is that it
11 was possible, then, that you were alone with her, but
12 you have no specific recollection of that ever
13 happening?
14 A. Yes, that's correct. It's possible that
15 she, in, while she was working there, brought
16 something to me and that at the time she brought it
17 to me, she was the only person there. That's
18 possible.
19 Q. Did it ever happen that you and she went
20 down the hallway from the Oval Office to the private
21 kitchen? 849-DC-00000404
22 MR. BENNETT: Your Honor, excuse me, Mr.
23 President, I need some guidance from the Court at
24 this point. I'm going to object to the innuendo.
25 I'm afraid, as I say, that this will leak. I don't

1 question the predicates here. I question the good
2 faith of Counsel, the innuendo in the question.
3 Counsel is fully aware that Ms. Lewinsky has filed,
4 has an affidavit which they are in possession of
5 saying that there is absolutely no sex of any kind in
6 any manner, shape or form, with President Clinton,
7 and yet listening to the innuendo in the questions --
8 JUDGE WRIGHT: No, just a minute, let me
9 make my ruling. I do not know whether counsel is
10 basing this question on any affidavit, but I will
11 direct Mr. Bennett not to comment on other evidence
12 that might be pertinent and could be arguably
13 coaching the witness at this juncture. Now, I, Mr.
14 Fisher is an officer of this Court, and I have to
15 assume that he has a good faith basis for asking this
16 question. If in fact he has no good faith basis for
17 asking the question, he could later be sanctioned.
18 If you would like, I will be happy to review in
19 camera any good faith basis he might have.
20 MR. BENNETT: Well, Your Honor, with all
21 due respect, I would like to know the proffer. I'm
22 not coaching the witness. In preparation of the
23 witness for this deposition, the witness is fully
24 aware of Ms. Lewinsky's affidavit, so I have not told
25 him a single thing he doesn't know, but I think when

1 he asks questions like this where he's sitting on an
2 affidavit from the witness, he should at least have a
3 good faith proffer.
4 JUDGE WRIGHT: Now, I agree with you that
5 he needs to have a good faith basis for asking the
6 question.
7 MR. BENNETT: May we ask what it is, Your
8 Honor?
9 JUDGE WRIGHT: And I'm assuming that he
10 does, and I will be willing to review this in camera
11 if he does not want to reveal it to Counsel.
12 MR. BENNETT: Fine.
13 MR. FISHER: I would welcome an opportunity
14 to explain to the Court what our good faith basis is
15 in an in camera hearing.
16 JUDGE WRIGHT: All right.
17 MR. FISHER: I would prefer that we not
18 take the time to do that now, but I can tell the
19 Court I am very confident there is substantial
20 basis. 849-DC-00000406
21 JUDGE WRIGHT: All right, I'm going to
22 permit the question. He's an officer of the Court,
23 and as you know, Mr. Bennett, this Court has ruled on
24 prior occasions that a good faith basis can exist
25 notwithstanding the testimony of the witness, of the

[EXHIBIT 25]

William Jefferson Clinton 204

1 do this, if this is ever used at trial, the Rules of
2 Evidence would apply, and as stated before, the Rules
3 of Evidence don't apply in this discovery
4 deposition. Go ahead.
5 Q. In paragraph eight of her affidavit, she
6 says this, "I have never had a sexual relationship
7 with the President, he did not propose that we have a
8 sexual relationship, he did not offer me employment
9 or other benefits in exchange for a sexual
10 relationship, he did not deny me employment or other
11 benefits for rejecting a sexual relationship."
12 Is that a true and accurate statement as
13 far as you know it?
14 A. That is absolutely true.
15 Q. Do you recall, do you recall --
16 MR. BENNETT: Your Honor, may I have this
17 appended as an exhibit to this deposition, please?
18 MR. FISHER: No objection, Your Honor.
19 JUDGE WRIGHT: All right, it may be.
20 MR. BENNETT: All right.
21 Q. Now you're aware, are you not, of the
22 allegations against you by Paula Corbin Jones in this
23 lawsuit; is that correct?
24 A. Yes, sir, I am. 849-DC-00000555
25 Q. Mr. President, did you ever make any sexual

[EXHIBIT 26]

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BY MR. BITTMAN:
Q Good afternoon, Mr. President.
A Good afternoon, Mr. Bittman.
Q My name is Robert Bittman. I'm an attorney with the Office of Independent Counsel.
Mr. President, we are first going to turn to some of the details of your relationship with Monica Lewinsky that follow up on your deposition that you provided in the Paula Jones case, as was referenced, on January 17th, 1998.
The questions are uncomfortable, and I apologize for that in advance. I will try to be as brief and direct as possible.
Mr. President, were you physically intimate with Monica Lewinsky?
A Mr. Bittman, I think maybe I can save the — you and the grand jurors a lot of time if I read a statement, which I think will make it clear what the nature of my relationship with Ms. Lewinsky was and how it related to the testimony I gave, what I was trying to do in that testimony. And I think it will perhaps make it possible for you to ask even more relevant questions from your point of view.
And, with your permission, I'd like to read that statement.
Q Absolutely. Please, Mr. President.
A When I was alone with Ms. Lewinsky on certain

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occasions in early 1996 and once in early 1997, I engaged in conduct that was wrong. These encounters did not consist of sexual intercourse. They did not constitute sexual relations as I understood that term to be defined at my January 17th, 1998 deposition. But they did involve inappropriate intimate contact.
These inappropriate encounters ended, at my insistence, in early 1997. I also had occasional telephone conversations with Ms. Lewinsky that included inappropriate sexual banter.
I regret that what began as a friendship came to include this conduct, and I take full responsibility for my actions.
While I will provide the grand jury whatever other information I can, because of privacy considerations affecting my family, myself, and others, and in an effort to preserve the dignity of the office I hold, this is all I will say about the specifics of these particular matters.
I will try to answer, to the best of my ability, other questions including questions about my relationship with Ms. Lewinsky; questions about my understanding of the term "sexual relations", as I understood it to be defined at my January 17th, 1998 deposition; and questions concerning alleged subornation of perjury, obstruction of justice, and intimidation of witnesses.

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[1] That, Mr. Bittman, is my statement.
[2] Q Thank you, Mr. President. And, with that, we would
[3] like to take a break.
[4] A Would you like to have this?
[5] Q Yes, please. As a matter of fact, why don't we
[6] have that marked as Grand Jury Exhibit WJC-1.
[7] (Grand Jury Exhibit WJC-1 was
[8] marked for identification.)
[9] THE WITNESS: So, are we going to take a break?
[10] MR. KENDALL: Yes. We will take a break. Can we
[11] have the camera off, now, please? And it's 1:14.
[12] (Whereupon, the proceedings were recessed from 1:14 p.m.
[13] until 1:30 p.m.)
[14] MR. KENDALL: 1:30, Bob.
[15] MR. BITTMAN: It's 1:30 and we have the feed with
[16] the grand jury.
[17] BY MR. BITTMAN:
[18] Q Good afternoon again, Mr. President.
[19] A Good afternoon, Mr. Bittman.
[20] (Discussion off the record.)
[21] BY MR. BITTMAN:
[22] Q Mr. President, your statement indicates that your
[23] contacts with Ms. Lewinsky did not involve any inappropriate,
[24] intimate contact.
[25] MR. KENDALL: Mr. Bittman, excuse me. The

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[1] witness –
[2] THE WITNESS: No, sir. It indicates –
[3] MR. KENDALL: The witness does not have –
[4] THE WITNESS: – that it did involve inappropriate
[5] and intimate contact.
[6] BY MR. BITTMAN:
[7] Q Pardon me. That it did involve inappropriate,
[8] intimate contact.
[9] A Yes, sir, it did.
[10] MR. KENDALL: Mr. Bittman, the witness – the
[11] witness does not have a copy of the statement. We just have
[12] the one copy.
[13] MR. BITTMAN: If he wishes –
[14] MR. KENDALL: Thank you.
[15] MR. BITTMAN: – his statement back?
[16] BY MR. BITTMAN:
[17] Q Was this contact with Ms. Lewinsky, Mr. President,
[18] did it involve any sexual contact in any way, shape, or form?
[19] A Mr. Bittman, I said in this statement I would like
[20] to stay to the terms of the statement. I think it's clear
[21] what inappropriately intimate is. I have said what it did
[22] not include. I – it did not include sexual intercourse, and
[23] I do not believe it included conduct which falls within the
[24] definition I was given in the Jones deposition. And I would
[25] like to stay with that characterization.

[In the Senate of the United States Sitting as a Court of Impeachment]

In re Impeachment of William Jefferson Clinton, President of the United States

TRIAL MEMORANDUM OF PRESIDENT WILLIAM JEFFERSON CLINTON

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TRIAL MEMORANDUM OF PRESIDENT WILLIAM JEFFERSON CLINTON

I. INTRODUCTION

Twenty-six months ago, more than 90 million Americans left their homes and work places to travel to schools, church halls and other civic centers to elect a President of the United States. And on January 20, 1997, William Jefferson Clinton was sworn in to serve a second term of office for four years.

The Senate, in receipt of Articles of Impeachment from the House of Representatives, is now gathered in trial to consider whether that decision should be set aside for the remaining two years of the President's term. It is a power contemplated and authorized by the Framers of the Constitution, but never before employed in our nation's history. The gravity of what is at stake—the democratic choice of the American people—and the solemnity of the proceedings dictate that a decision to remove the President from office should follow only from the most serious of circumstances and should be done in conformity with Constitutional standards and in the interest of the Nation and its people.

The Articles of Impeachment that have been exhibited to the Senate fall far short of what the Founding Fathers had in mind when they placed in the hands of the Congress the power to impeach and remove a President from office. They fall far short of what the American people demand be shown and proven before their democratic choice is reversed. And they even fall far short of what a prudent prosecutor would require before presenting a case to a judge or jury.

Take away the elaborate trappings of the Articles and the high-flying rhetoric that has accompanied them, and we see clearly that the House of Representatives asks the Senate to remove the President from office because he:

• used the phrase "certain occasions" to describe the frequency of his improper intimate contacts with Ms. Monica Lewinsky. There were, according to the House Managers, eleven such contacts over the course of approximately 500 days.

Should the will of the people be overruled and the President of the United States be removed from office because he used the phrase "certain occasions" to describe eleven events over some 500 days? That is what the House of Representatives asks the Senate to do.

• used the word "occasional" to describe the frequency of inappropriate telephone conversations between he and Monica Lewinsky. According to Ms. Lewinsky, the President and Ms. Lewinsky engaged in between ten and fifteen such conversations spanning a 23-month period.

Should the will of the people be overruled and the President of the United States be removed from office because he used the word "occasional" to describe up to 15 telephone calls over a 23-month period? That is what the House of Representatives asks the Senate to do.

• said the improper relationship with Ms. Lewinsky began in early 1996, while she recalls that it began in November 1995. And he said the contact did not include touching certain parts of her body, while she said it did.

Should the will of the people be overruled and the President of the United States be removed from office because two people have a different recollection of the details of a wrongful relationship—which the President has admitted? That is what the House of Representatives asks the Senate to do.

The Articles of Impeachment are not limited to the examples cited above, but the other allegations of wrongdoing are similarly unconvincing. There is the charge that the President unlawfully obstructed justice by allegedly trying to find a job for Monica Lewinsky in exchange for her silence about their relationship. This charge is made despite the fact that no one involved in the effort to find work for Ms. Lewinsky—including Ms. Lewinsky herself—testifies that there was any connection between the job search and the affidavit. Indeed, the basis for that allegation, Ms. Lewinsky's statements to Ms. Tripp, was expressly repudiated by Ms. Lewinsky under oath.

There is also the charge that the President conspired to obstruct justice by arranging for Ms. Lewinsky to hide gifts that he had given her, even though the facts and the testimony contain no evidence that he did so. In fact, the evidence shows that the President gave her new gifts on the very day that the articles allege he conspired to conceal his gifts to her.

In the final analysis, the House is asking the Senate to remove the President because he had a wrongful relationship and sought to keep the existence of that relationship private.

Nothing said in this Trial Memorandum is intended to excuse the President's actions. By his own admission, he is guilty of personal failings. As he has publicly stated, "I don't think there is a fancy way to say that I have sinned." He has misled his family, his friends, his staff, and the Nation about the nature of his relationship with Ms. Lewinsky. He hoped to avoid exposure of personal wrongdoing so as to protect his family and himself and to avoid public embarrassment. He has acknowledged that his actions were wrong.

By the same token, these actions must not be mischaracterized into a wholly groundless excuse for removing the President from the office to which he was twice elected by the American people. The allegations in the articles and the argument in the House Managers' Trial Memorandum do not begin to satisfy the stringent showing required by our Founding Fathers to remove a duly elected President from office, either as a matter of fact or law.

A. THE CONSTITUTIONAL STANDARD FOR IMPEACHMENT HAS NOT BEEN SATISFIED

There is strong agreement among constitutional and legal scholars and historians that the substance of the articles does not amount to impeachable offenses. On November 6, 1998, 430 Constitutional law professors wrote:

"Did President Clinton commit 'high Crimes and Misdemeanors' warranting impeachment under the Constitution? We . . . believe that the misconduct alleged in the report of the Independent Counsel . . . does not cross the threshold. . . . [I]t is clear that Members of Congress could violate their constitutional responsibilities if they sought to impeach and remove the President for misconduct, even criminal misconduct, that fell short of the high constitutional standard required for impeachment."

On October 28, 1998, more than 400 historians issued a joint statement warning that because impeachment had traditionally been reserved for high crimes and misdemeanors in the exercise of executive power, impeachment of the President based on the facts alleged in the OIC Referral would set a dangerous precedent. "If carried forward, they will leave the Presidency permanently disfigured and diminished, at the mercy as never before of caprices of any Congress. The Presidency, historically the center of leadership during our great national ordeals, will be crippled in meeting the inevitable challenges of the future."

We address why the charges in the two articles do not rise to the level of "high Crimes and Misdemeanors" in Section III, Constitutional Standard and Burden of Proof.

B. THE PRESIDENT DID NOT COMMIT PERJURY OR OBSTRUCT JUSTICE

Article I alleges perjury before a federal grand jury. Article II alleges obstruction of justice. Both perjury and obstruction of justice are statutory crimes. In rebutting the allegations contained in the articles of impeachment, this brief refers to the facts as well as to laws, legal principles, court decisions, procedural safeguards, and the Constitution itself. Those who seek to remove the President speak of the "rule of law." Among the most fundamental rules of law are the principles that those who accuse have the burden of proof, and those who are accused have the right to defend themselves by relying on the law, established procedures, and the Constitution. These principles are not "legalisms" but rather the very essence of the "rule of law" that distinguishes our Nation from others.

We respond, in detail, to those allegations whose substance we can decipher in Section IV, The President Should Be Acquitted on Article I, and in Section V, The President Should Be Acquitted on Article II.

C. COMPOUND CHARGES AND VAGUENESS

If there were any doubt that the House of Representatives has utterly failed in its constitutional responsibility to the Senate and to the President, that doubt vanishes upon reading the Trial Memorandum submitted by the House Managers. Having proferred two articles of impeachment, each of which unconstitutionally combines multiple offenses and fails to give even minimally adequate notice of the charges it encompasses, the House—three days before the Managers are to open their case—is still expanding, not refining, the scope of those articles. In further violation of the most basic constitutional principles, their brief advances, *merely as "examples,"* nineteen conclusory allegations—eight of perjury under Article I and eleven of obstruction of justice under Article II, some of which have never appeared before, even in the Report submitted by the Judiciary Committee ("Committee Report"), much less in the Office of Independent Counsel ("OIC") Referral or in the articles themselves.[1] If the target the Managers present to the Senate and to the President is *still* moving now, what can the President expect in the coming days? Is there any point at which the President will be given the right accorded a defendant in the most minor criminal case—to know with certainty the charges against which he must defend?

The Senate, we know, fully appreciates these concerns and has, in past proceedings, dealt appropriately with articles far less flawed than these. The constitutional concerns raised by the House's action are addressed in Section VI, The Structural Deficiencies of the Articles Preclude a Constitutionally Sound Vote.

[1] For example, the House managers add a charge that the President engaged in "legalistic hair splitting [in his response to the 81 questions] in an obvious attempt to skirt the whole truth and to deceive and obstruct" the Committee. This charge was specifically rejected by the full House of Representatives when it rejected Article IV.

II. BACKGROUND

A. THE WHITEWATER INVESTIGATIVE DEAD-END

The Lewinsky investigation emerged in January 1998 from the long-running Whitewater investigation. On August 5, 1994, the Special Division of the United States Court of Appeals for the District of Columbia Court Circuit appointed Kenneth W. Starr as Independent Counsel to conduct an investigation centering on two Arkansas entities, Whitewater Development Company, Inc., and Madison Guaranty Savings and Loan Association.

In the spring of 1997, OIC investigators, without any expansion of jurisdiction, interviewed Arkansas state troopers who had once been assigned to the Governor's security detail, and "[t]he troopers said Starr's investigators asked about 12 to 15 women by name, *including Paula Corbin Jones. . . .*" Woodward & Schmidt, "Starr Probes Clinton Personal Life," *The Washington Post* (June 25, 1997) at A1 (emphasis added). "The nature of the questioning marks a sharp departure from previous avenues of inquiry in the three-year old investigation. . . . Until now, . . . what has become a wide-ranging investigation of many aspects of Clinton's governorship has largely steered clear of questions about Clinton's relationships with women. . . ."[2] One of the most striking aspects of this new phase of the Whitewater investigation was the extent to which it focused on the *Jones* case. One of the troopers interviewed declared, "[t]hey asked me about Paula Jones, all kinds of questions about Paula Jones, whether I saw Clinton and Paula together and how many times."[3]

In his November 19, 1998, testimony before the House Judiciary Committee, Mr. Starr conceded that his agents had conducted these interrogations and acknowledged that at that time, he had not sought expansion of his jurisdiction from either the Special Division or the Attorney General.[4] Mr. Starr contended that these inquiries were somehow relevant to his Whitewater investigation: "we were, in fact interviewing, as good prosecutors, good investigators do, individuals who would have information that may be relevant to our inquiry about the President's involvement in Whitewater, in Madison Guaranty Savings and Loan and the like."[5] It seems irrefutable, however, that the OIC was in fact engaged in an unauthorized attempt to gather embarrassing information about the President—information wholly unrelated to Whitewater or Madison Guaranty Savings and Loan, but potentially relevant to the lawsuit filed by Paula Jones.

B. THE PAULA JONES LITIGATION

The Paula Jones lawsuit made certain allegations about events she said had occurred three years earlier, in 1991, when the President was Governor of Arkansas. Discovery in the case had been stayed until the Supreme Court's decision on May 27, 1997, denying the President temporary immunity from suit.[6] Shortly thereafter, Ms. Jones' legal team began a public relations offensive against the President, headed by Ms. Jones' new spokesperson, Mr. Susan Carpenter-McMillan, and her new counsel affiliated with the conservative Rutherford Institute.[7] "I will never deny that when I first heard about this case I said, 'Okay, good. We're gonna get that little slimeball,' said Ms. Carpenter-McMillan."[8] While Ms. Jones' previous attor-

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[2] *Ibid.* Trooper Roger Perry, a 21-year veteran of the Arkansas state police, stated that he "was asked about the most intimate details of Clinton's life: 'I was left with the impression that they wanted me to show he was a womanizer. . . . All they wanted to talk about was women.'" *Ibid.* (Ellipsis in original).

[3] *Ibid.*

[4] Transcript of November 19, 1998 House Judiciary Committee Hearing at 377–378.

[5] *Ibid.* at 378.

[6] *Clinton* v. *Jones,* 520 U.S. 681 (1997).

[7] Ms. Jones was described as having "accepted financial support of a Virginia conservative group," which intended to "raise $100,000 or more on Jones's behalf, although the money will go for expenses and not legal fees." "Jones Acquires New Lawyers and Backing," *The Washington Post* (October 2, 1998) at A1. Jones' new law firm, the Dallas-based Radar, Campbell, Fisher and Pyke, had "represented conservatives in antiabortion cases and other causes." *Ibid. See also* Dallas Lawyers Agree to Take on Paula Jones' Case—Their Small Firm Has Ties to Conservative Advocacy Group," *The Los Angeles Times* (Oct. 2, 1997) (Rutherford Institute a "conservative advocacy group.").

[8] "Cause Celebre: An Antiabortion Activist Makes Herself the Unofficial Mouthpiece for Paula Jones." *The Washington Post* (July 23, 1998) at C1. Ms. Carpenter-McMillan, "a cause-oriented, self-defined 'conservative feminist'", described her role as "flaming the White House" and declared "'Unless Clinton wants to be terribly embarrassed, he'd better cough up what Paula needs. Anybody that comes out and testifies against Paula better have the past of a Mother Teresa, because our investigators will investigate their morality.'" "Paula Jones' Team Not All About Teamwork," *USA Today* (Sept. 29, 1997) at 4A.

neys, Messrs. Gilbert Davis and Joseph Cammarata, had largely avoided the media, as the *Jones* civil suit increasingly became a partisan vehicle to try to damage the President, public personal attacks became the order of the day.[9] As is now well known, this effort led ultimately to the Jones lawyers being permitted to subpoena various women, to discover the nature of their relationship, if any, with the President, allegedly for the purpose of determining whether they had information relevant to the sexual harassment charge. Among these women was Ms. Lewinsky.

In January 1998, Ms. Linda Tripp notified the OIC of certain information she believed she had about Ms. Lewinsky's involvement in the *Jones* case. At that time, the OIC investigation began to intrude formally into the *Jones* case: the OIC met with Ms. Tripp through the week of January 12, and with her cooperation taped Ms. Lewinsky discussing the *Jones* case and the President. Ms. Tripp also informed the OIC that she had been surreptitiously taping conversations with Ms. Lewinsky in violation of Maryland law, and in exchange for her cooperation, the OIC promised Ms. Tripp immunity from federal prosecution, and assistance in protecting her from state prosecution.[10] On Friday, January 16, after Ms. Tripp wore a body wire and had taped conversations with Ms. Lewinsky for the OIC, the OIC received jurisdiction from the Attorney General and formalized an immunity agreement with Ms. Tripp in writing.

The President's deposition in the *Jones* case was scheduled to take place the next day, on Saturday, January 17. As we now know, Ms. Tripp met with and briefed the lawyers for Ms. Jones the night before the deposition on her perception of the relationship between Ms. Lewinsky and the President—doing so based on confidences Ms. Lewinsky had entrusted to her.[11] She was permitted to do so even though she has been acting all week at the behest of the OIC and was dependent on the OIC to use its best efforts to protect her from state prosecution. At the deposition the next day, the President was asked numerous questions about his relationship with Ms. Lewinsky by lawyers who already knew the answers.

The *Jones* case, of course, was not about Ms. Lewinsky. She was a peripheral player and, since her relationship with the President was concededly consensual, irrelevant to Ms. Jones' case. Shortly after the President's deposition, Chief Judge Wright ruled that evidence pertaining to Ms. Lewinsky would not be admissible at the *Jones* trial because "it is not essential to the core issues in this case."[12] The Court also ruled that, given the allegations at issue in the *Jones* case, the Lewinsky evidence "might be inadmissible as extrinsic evidence" under the Federal Rules of Evidence because it involved merely the "specific instances of conduct" of a witness.[13]

On April 1, 1998, the Court ruled that Ms. Jones had no case and granted summary judgment for the President. Although Judge Wright "viewed the record in the light most favorable to [Ms. Jones] and [gave] her the benefit of all reasonable factual inferences,"[14] the Court ruled that, as a matter of law, she simply had no case against President Clinton, both because "there is no genuine issue as to any material fact" and because President Clinton was "entitled to a judgment as a matter of law." *Id.* at 11–12. After reviewing all the proffered evidence, the Court ruled that "the record taken as a whole could not lead a rational trier of fact to find for" Ms. Jones. *Id.* at 39.

C. THE PRESIDENT'S GRAND JURY TESTIMONY ABOUT MS. LEWINSKY

On August 17, 1998, the President voluntarily testified to the grand jury and specifically acknowledged that he had had a relationship with Ms. Lewinsky involving "improper intimate contact," and that he "engaged in conduct that was wrong." App.

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[9] After Ms. Jones' new team had been in action for three months, one journalist commented: "In six years of public controversy over Clinton's personal life, what is striking in some ways is how little the debate changes. As in the beginning, many conservatives nurture the hope that the past will be Clinton's undoing. Jones' adviser, Susan Carpenter-McMillan, acknowledged on NBC's 'Meet the Press' yesterday that her first reaction when she first heard Jones' claims about Clinton was, 'Good, we're going to get that little slime ball.'" (Harris, "Jones Case Tests Political Paradox," *The Washington Post* (Jan. 19, 1998) at A1.

[10] Supplemental Materials to the Referral to the United States House of Representatives Pursuant to Title 28, United States Code Section 595(C), H.Doc. 105–316 (hereinafter "Supp.") at 3758–3759, 4371–4373 (House Judiciary Committee) (Sept. 28, 1998).

[11] Baker, "Linda Tripp Briefed Jones Team on Tapes: Meeting Occurred Before Clinton Deposition," *The Washington Post* (Feb. 14, 1998) at A1.

[12] Order, at 2, *Jones* v. *Clinton*, No. LR–C–94–290 (E.D. Ark.) (Jan. 29, 1998).

[13] *Ibid.*

[14] *Jones* v. *Clinton*, No. LR–C–94–290 (E.D. Ark.), Memorandum Opinion and Order (April 1, 1998), at 3 n.3.

at 461.[15] He described how the relationship began and how he had ended it early in 1997—long before any public attention or scrutiny. He stated to the grand jury "it's an embarrassing and personally painful thing, the truth about my relationship with Ms. Lewinsky," App. at 533, and told the grand jurors, "I take full responsibility for it. It wasn't her fault, it was mine." App. at 589–90.

The President also explained how he had tried to navigate the deposition in the *Jones* case months earlier without admitting what he admitted to the grand jury—that he had been engaged in an improper intimate relationship with Ms. Lewinsky. *Id*. a 530–531. He further testified that the "inappropriate encounters" with Ms. Lewinsky had ended, at his insistence, in early 1997. He declined to describe, because of considerations of personal privacy and institutional dignity, certain specifics about his conduct with Ms. Lewinsky,[16] but he indicated his willingness to answer,[17] and he did answer, the other questions put to him about his relationship with her. No one who watched the videotape of this grand jury testimony had any doubt that the President admitted to having had an improper intimate relationship with Ms. Lewinsky.

D. PROCEEDINGS IN THE HOUSE OF REPRESENTATIVES

On September 9, 1998, Mr. Starr transmitted a Referral to the House of Representatives that alleged eleven acts by the President related to the Lewinsky matter that, in the opinion of the OIC, "may constitute grounds for an impeachment."[18] The allegations fell into three broad categories: lying under oath, obstruction of justice, and abuse of power.

The House Judiciary held a total of four hearings and called but one witness: Kenneth W. Starr. The Committee allowed the President's lawyers two days in which to present a defense. The White House presented four panels of distinguished expert witnesses who testified that the facts, as alleged, did not constitute an impeachable offense, did not reveal an abuse of power, and would not support a case for perjury or obstruction of justice that any reasonable prosecutor would bring. White House Counsel Charles F.C. Ruff presented argument to the Committee on behalf of the President, which is incorporated into this Trial Memorandum by reference.[19]

On December 11 and 12, the Judiciary Committee voted essentially along party lines to approve four articles of impeachment. Republicans defeated the alternative resolution of censure offered by certain Committee Democrats. Almost immediately after censure failed in the Committee, the House Republican leadership declared publicly that no censure proposal would be considered by the full House when it considered the articles of impeachment.[20]

On December 19, 1998, voting essentially on party lines, the House of Representatives approved two articles of impeachment: Article I, which alleged perjury before the grand jury, passed by a vote of 228 to 206 and Article III, which alleged obstruction of justice, passed by a vote of 221 to 212. The full House defeated two other Articles: Article II, which alleged that the President committed perjury in his civil deposition, and Article IV, which alleged abuse of power. Consideration of a censure resolution was blocked, even though members of both parties had expressed a desire to vote on such an option.

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[15] Appendices to the Referral to the United States House of Representatives Pursuant to Title 28, United States Code Section 595(c), H.Doc. 105–311 (hereinafter "App.") at 461 (House Judiciary Committee) (Sept. 18, 1998).

[16] "While I will provide the grand jury whatever other information I can, because of privacy considerations affecting my family, myself, and others, and in an effort to preserve the dignity of the office I hold, this is all I will say about the specifics of these particular matters." App. at 461.

[17] "I will try to answer, to the best of my ability, other questions including questions about my relationship with Ms. Lewinsky, questions about my understanding of the term 'sexual relations,' as I understood it to be defined at my January 17th, 1998 deposition; and questions concerning alleged subornation of perjury, obstruction of justice, and intimidation of witnesses." App. at 461.

[18] Referral from Independent Counsel Kenneth W. Starr in Conformity with the Requirements of Title 28, United States Code, Section 595(c), at 1 (House Judiciary Committee) (printed September 11, 1998).

[19] Also incorporated by reference into this Trial Memorandum are the four prior submissions of the President to the House of Representatives: Preliminary Memorandum Concerning Referral of Office of Independent Counsel (September 11, 1998) (73 pages); Initial Response to Referral of Office of Independent Counsel (September 12, 1998) (42 pages); Memorandum Regarding Standards of Impeachment (October 2, 1998) (30 pages); Submission by Counsel for President Clinton to the Committee on the House Judiciary of the United States House of Representatives (December 8, 1998) (184 pages).

[20] *See* Baker & Eilperin, "GOP Blocks Democrats' Bid to Debate Censure in House: Panel Votes Final, Trimmed Article of Impeachment," *The Washington Post* (Dec. 13, 1998) at A1.

From beginning to end the House process was both partisan and unfair. Consider:

• The House released the entire OIC Referral to the public without ever reading it, reviewing it, editing it, or allowing the President's counsel to review it;

• The Chairman of the House Judiciary Committee said he had "no interest in not working in a bipartisan way";[21]

• The Chairman also pledged a process the American people would conclude was fair;[22]

• The Speaker-Designate of the House endorsed a vote of conscience on a motion to censure;[23]

• Members of the House were shown secret "evidence" in order to influence their vote—evidence which the President's counsel still has not been able to review.

III. THE CONSTITUTIONAL STANDARD AND BURDEN OF PROOF FOR DECISION

A. THE OFFENSES ALLEGED DO NOT MEET THE CONSTITUTIONAL STANDARD OF HIGH CRIMES AND MISDEMEANORS

1. The Senate Has a Constitutional Duty to Confront the Question Whether Impeachable Offenses Have Been Alleged

It is the solemn duty of the Senate to consider the question whether the articles state an impeachable offense.[24] That Constitutional question has *not,* in the words of one House Manager, "already been resolved by the House."[25] To the contrary, that question now awaits the Senate's measured consideration and independent judgment. Indeed, throughout our history, resolving this question has been an essential part of the Senate's constitutional obligation to "try all Impeachments." U.S. Const. Art. § 3, cl.7. In the words of John Logan, a House Manager in the 1868 proceedings:

"It is the rule that all questions of law or fact are to be decided, in these proceedings, by the final vote upon the guilt or innocence of the accused. It is also the rule, that in determining this general issue *senators must consider the sufficiency or insufficiency in law* or in fact *of every article of accusation.*"[26]

We respectfully suggest that the articles exhibited here do not state wrongdoing that constitutes impeachable offenses under our Constitution.

2. The Constitution Requires a High Standard of Proof of "High Crimes and Misdemeanors" for Removal

a. The Constitutional Text and Structure Set an Intentionally High Standard for Removal

The Constitution provides that the President shall be removed from office only upon "Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors." U.S. Constitution, Art. II, section 4. The charges fail to meet the high standard that the Framers established.[27]

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[21] *Associated Press* (March 25, 1998).

[22] "This whole proceeding will fall on its face if it's not perceived by the American people to be fair." *Financial Times* (Sept. 12, 1998).

[23] "The next House Speaker, Robert Livingston, said the coming impeachment debate should allow lawmakers to make a choice between ousting President Clinton and imposing a lesser penalty such as censure. The Louisiana Republican said the House can't duck a vote on articles of impeachment if reported next month by its Judiciary Committee. But an 'alternative measure is possible' he said, and the GOP leadership should 'let everybody have a chance to vote on the option of their choice.'" *Wall Street Journal* (Nov. 23, 1998).

[24] In the impeachment trial of Andrew Johnson, the President's counsel answered (to at least one article) that the matters alleged "do not charge or allege the commission of any act whatever by this respondent, in his office of President of the United States, nor the omission by this respondent of any act of official obligation or duty in his office of President of the United States." 1 *Trial of Andrew Johnson* (1868) ("TAJ") 53.

[25] *See* Statement of Rep. Bill McCollum: "[A]re these impeachable offenses, which I think has already been resolved by the House. I think constitutionally that's our job to do." Fox News Sunday (January 3, 1999).

[26] Closing argument of Manager John H. Logan, 2 TAJ 18 (emphasis added). See also Office of Senate Legal Counsel, *Memorandum on Impeachment Issues* at 25–26 (Oct. 7, 1988) ("Because the Senate acts as both judge and jury in an impeachment trial, the Senate's conviction on a particular article of impeachment reflects the Senate's judgment not only that the accused engaged in the misconduct underlying the article but also that the article stated an impeachable offense").

[27] For a more complete discussion of the Standards for Impeachment, please see *Submission by Counsel for President Clinton to the House Judiciary of the United States House of Representatives* at 24–43 (December 8, 1998); *Memorandum Regarding Standards of Impeachment* (Octo-

Continued

The syntax of the Constitutional standard "Treason, Bribery *or other* high Crimes and Misdemeanors" (emphasis added) strongly suggests, by the interpretive principle *noscitur a sociis,*[28] that, to be impeachable offenses, high crimes and misdemeanors must be of the seriousness of "Treason" and "Bribery."

Our Constitutional structure reaffirms that the standard must be a very high one. Ours is a Constitution of separated powers. In that Constitution, the President does not serve at the will of Congress, but as the directly elected,[29] solitary head of the Executive Branch. The Constitution reflects a judgment that a strong Executive, executing the law independently of legislative will, is a necessary protection for a free people.

These elementary facts of constitutional structure underscore the need for a very high standard for impeachment. The House Managers, in their Brief, suggest that the failure to remove the President would raise the standard for impeachment higher than the Framers intended. They say that if the Senate does not remove the President, "The bar will be so high that only a convicted felon or a traitor will need to be concerned." But that standard is just a modified version of the plain language of Article II, Section 4 of the Constitution, which says a President can only be impeached and removed for "Treason, Bribery, or other high Crimes and Misdemeanors." The Framers wanted a high bar. It was not the intention of the Framers that the President should be subject to the will of the dominant legislative party. As Alexander Hamilton said in a warning against the politicization of impeachment: "There will always be the greater danger that the decision will be regulated more by comparative strength of parties than by the real demonstrations of innocence or guilt." Federalist 65. Our system of government does not permit Congress to unseat the President merely because it disagrees with his behavior or his policies. The Framers' decisive rejection of parliamentary government is one reason they caused the phrase "Treason, Bribery or other high Crimes and Misdemeanors" to appear in the Constitution itself. They chose to specify those categories of offenses subject to the impeachment power, rather than leave that judgment to the unfettered whim of the legislature.

Any just and proper impeachment process must be reasonably viewed by the public as arising from one of those rare cases when the Legislature is compelled to stand in for all the people and remove a President whose continuation in office threatens grave harm to the Republic. Indeed, it is not exaggeration to say—as a group of more than 400 leading historians and constitutional scholars publicly stated—that removal on these articles would "mangle the system of checks and balances that is our chief safeguard against abuses of public power."[30] Removal of the President on these grounds would defy the constitutional presumption that the removal power rests with the people in elections, and it would do incalculable damage to the institution of the Presidency. If "successful," removal here "will leave the Presidency permanently disfigured and diminished, at the mercy as never before of the caprices of any Congress."[31]

The Framers made the President the sole nationally elected public official (together with the Vice-President), responsible to all the people. Therefore, when articles of impeachment have been exhibited, the Senate confronts this inescapable question: is the alleged misconduct so profoundly serious, so malevolent to our Constitutional system, that it justifies undoing the people's decision? Is the wrong alleged of a sort that not only demands removal of the President before the ordinary electoral cycle can do its work, but also justifies the national trauma that accompanies the impeachment trial process itself? The wrongdoing alleged here does not remotely meet that standard.

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ber 2, 1998); and *Impeachment of William Jefferson, President of the United States*, Report of the Committee on the Judiciary to Accompany H. Res. 611, H. Rpt. 105–830, 105th Cong., 2d Sess. at 332–39 (citing Minority Report). References to pages 2–203 of the Committee Report will be cited hereinafter as "Committee Report." References to pages 329–406 of the Committee Report will be cited hereinafter as "Minority Report."

[28] "It is known from its associates' . . . the meaning of a word is or may be known from the accompanying words." *Black's Law Dictionary* 1209 (4th ed. 1968).

[29] Of course, that election takes place through the mediating activity of the Electoral College. *See* U.S. Const. Art. II, § 1, cl. 2–3 and Amend. XII.

[30] Statement of Historians in Defense of the Constitution (Oct. 28, 1998) ("*Statement of Historians*"); *see also* Schmitt, "Scholars and Historians Assail Clinton Impeachment Inquiry," *The New York Times* (Oct. 19, 1998) at A18.

[31] *Statement of Historians.*

b. The Framers Believed that Impeachment and Removal Were Appropriate Only for Offenses Against the System of Government

"[H]igh Crimes and Misdemeanors" refers to nothing short of Presidential actions that are "great and dangerous offenses" or "attempts to subvert the Constitution."[32] Impeachment was never intended to be a remedy for private wrongs. It was intended to be a method of removing a President whose continued presence in the Office would cause grave danger to the Nation and our Constitutional system of government.[33] Thus, "in all but the most extreme instances, impeachment should be limited to abuse of public office, not private misconduct unrelated to public office."[34]

Impeachment was designed to be a means of redressing wrongful public conduct. As scholar and Justice James Wilson wrote, "our President . . . is amendable to [the laws] in his private character as a citizen, and *in his public character* by impeachment."[35] As such, impeachment is limited to certain forms of wrongdoing. Alexander Hamilton described the subject of the Senate's impeachment jurisdiction as "those offenses which proceed from the misconduct of public men, or in other words from the abuse or violation of some public trust. They are of a nature which may with peculiar propriety be denominated POLITICAL, as *they relate chiefly to injuries done to the society itself.*"[36]

The Framers "intended that a president be removable from office for the commission of great offenses against the Constitution."[37] Impeachment therefore addresses public wrongdoing, whether denominated a "political crime [ ] against the state,"[38] or "an act of malfeasance or abuse of office,"[39] or a "great offense [ ] against the federal government."[40] Ordinary civil and criminal wrongs can be addressed through ordinary judicial processes. And ordinary political wrongs can be addressed at the ballot box and by public opinion. Impeachment is reserved for the most serious public misconduct, those aggravated abuses of executive power that, given the President's four-year term, might otherwise go unchecked.

3. Past Precedents Confirm that Allegations of Dishonesty Do Not Alone State Impeachable Offenses

Because impeachment of a President nullifies the popular will of the people, as evidence by an election, it must be used with great circumspection. As applicable precedents establish, it should not be used to punish private misconduct.

a. The Fraudulent Tax Return Allegation Against President Nixon

Five articles of impeachment were proposed against then-President Nixon by the Judiciary Committee of the House of Representatives in 1974. Three were approved and two were not. The approved articles alleged *official wrongdoing*. Article I charged President Nixon with "using the powers of his high office [to] engage [ ] . . . in a course of conduct or plan designed to delay, impede and obstruct" the Watergate investigation.[41] Article II described the President as engaging in "repeated and continuing abuse of the powers of the Presidency in disregard of the fundamental principle of the rule of law in our system of government" thereby "us[ing]

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[32] George Mason, 2 Farrand, *The Records of the Federal Convention of 1787* 550 (Rev. ed. 1966).

[33] As the 1975 Watergate staff report concluded "Impeachment is the first step in remedial process—removal from office and possible disqualification from holding future office. The purpose of impeachment is not personal punishment; its function is primarily to maintain constitutional government. . . . In an impeachment proceeding a President is called to account for abusing powers that only a President possesses." *Constitutional Grounds for Presidential Impeachment, Report by the Staff of the Impeachment Inquiry*, House Comm. on Judiciary, 93d Cong., 2d Sess. at 24 (1974) ("*Nixon Impeachment Inquiry*").

[34] Minority Report at 337.

[35] 2 *Elliot*, The Debate in the Several State Conventions on the Adoption of the Federal Constitution 480 (reprint of 2d ed.)

[36] *The Federalist* No. 65 at 331 (Gary Wills ed. 1982). As one of the most respected of the early commentators explained, the impeachment "power partakes of a political character, as it respects injuries to the society in its political character." Story, *Commentaries on the Constitution*, Sec. 744. (reprint of 1st ed. 1833).

[37] John Labovitz, *Presidential Impeachment* 94 (1978).

[38] Raoul Berger, *Impeachment* 61 (1973).

[39] Rotunda, *An Essay on the Constitutional Parameters of Federal Impeachment*, 76 Ky. L.J. 707, 724 (1987/1988).

[40] Gerhardt, *The Constitutional Limits to Impeachment and Its Alternatives*, 68 Tex. L. Rev. 1, 85 (1989).

[41] *Impeachment of Richard M. Nixon, President of the United States*, Report of the Comm. on the Judiciary, 93rd Cong., 2d Sess, H. Rep. 93–1305 (Aug. 20, 1974) (hereinafter "*Nixon Report*") at 133.

his power as President to violate the Constitution and the law of the land."[42] Article III charged the President with refusing to comply with Judiciary Committee subpoenas in frustration of a power necessary to "preserve the integrity of the impeachment process itself and the ability of Congress to act as the ultimate safeguard against improper Presidential conduct."[43]

On article not approved by the House Judiciary Committee charged that President Nixon both "knowingly and fraudulently failed to report certain income and claimed deductions [for 1969–72] on his Federal income tax returns which were not authorized by law."[44] The President had signed his returns for those years under penalty of perjury,[45] and there was reason to believe that the underlying facts would have supported a criminal prosecution against President Nixon himself.[46]

Specifying the applicable standard for impeachment, the majority staff concluded that "[b]ecause impeachment of a President is a grave step for the nation, it is to be predicated only upon conduct seriously incompatible with either the constitutional form and principles of our government or the proper performance of constitutional duties of the president office."[47]

And the minority views of many Republican members were in substantial agreement: "the framers . . . were concerned with preserving the government from being overthrown by the treachery or corruption of one man. . . . [I]t is our judgment, based upon this constitutional history, that the Framers of the United States Constitution intended that the President should be removable by the legislative branch only for serious misconduct dangerous to the system of government established by the Constitution."[48]

The legal principle that impeachable offenses required misconduct dangerous to our system of government provided one basis for the Committee's rejection of the fraudulent-tax-return charge. As Congressman Hogan (R-Md.) put the matter, the Constitution's phrase "high crime signified a crime against the system of government, not merely a serious crime,"[49] As noted, the tax-fraud charge, involving an act which did not demonstrate public misconduct, was rejected by an overwhelming (and bipartisan) 26-12 margin.[50]

b. The Financial Misdealing Allegation Against Alexander Hamilton

In 1792, Congress investigated Secretary of Treasury Alexander Hamilton for alleged financial misdealings with a convicted swindler. Hamilton had made payments to the swindler and had urged his wife (Hamilton's paramour) to burn incriminating correspondence. Members of Congress investigated the matter and it came to the attention of President Washington and future Presidents Adams, Jefferson, Madison and Monroe.

This private matter was not deemed worthy of removing Mr. Hamilton as Secretary of the Treasury.[51] Even when it eventually became public, it was no barrier to Hamilton's appointment to high position in the United States Army. Although not insignificant, Hamilton's behavior was essentially private. It was certain not regarded as impeachable.

4. The Views of Prominent Historians and Legal Scholars Confirm that Impeachable Offenses Are not Present

a. No Impeachable Offense Has Been Stated Here

There is strong agreement among constitutional scholars and historians that the articles do not charge impeachable offenses. As Professor Michael Gerhardt summarized in his recent testimony before a subcommitte of the House of Representatives,

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[42] *Nixon Report* at 180.

[43] *Id.* 212–13.

[44] *Id.* at 220. The President was alleged to have failed to report certain income, to have taken improper tax deductions, and to have manufactured (either personally or through his agents) false documents to support the deductions taken.

[45] Given the underlying facts, that act might have provided the basis for multiple criminal charges; conviction on, for example, the tax evasion charge, could have subjected President Nixon to a 5-year prison term.

[46] *See Nixon Report* at 344 ("the Committee was told by a criminal fraud tax expert that on the evidence presented to the Committee, if the President were an ordinary taxpayer, the government would seek to send him to jail") (Statement of Additional Views of Mr. Mezvinsky, *et al.*)

[47] *Nixon Impeachment Inquiry* at 26 (emphasis added).

[48] *Nixon Report* at 364–365 (Minority Views of Messrs. Hutchinson, Smith, Sandman, Wiggins, Dennis, Mayne, Lott, Moorhead, Maraziti and Latta).

[49] *Id.* (quoting with approval conclusion of *Nixon Impeachment Inquiry*).

[50] *Nixon Report* at 220.

[51] *See generally* Rosenfeld, "Founding Fathers Didn't Flinch," *The Los Angeles Times* (September 18, 1980).

there is "widespread recognition [of] a paradigmatic case for impeachment."[52] In such a case, "*there must be a nexus between the misconduct of an impeachable official and the latter's official duties.*"[53]

There is no such nexus here. Indeed the allegations are so far removed from official wrongdoing that their assertion here threatens to weaken significantly the Presidency itself. As the more than 400 prominent historians and constitutional scholars warned in their public statement: "[t]he theory of impeachment underlying these efforts is unprecedented in our history . . . [and is] are extremely ominous for the future of our political institutions. If carried forward, [the current processes] will leave the Presidency permanently disfigured and diminished, at the mercy as never before of the caprices of any Congress.[54]

Similarly, in a letter to the House of Representatives, an extraordinary group of 430 legal scholars argued together that these offenses, even if proven true, did not rise to the level of an impeachable offense.[55] The gist of these scholarly objections is that the alleged wrongdoing is insufficiently connected to the exercise of public office. Because the articles charge wrongdoing of an essentially private nature, any harm such behavior poses is too removed from our system of government to justify unseating the President. Numerous scholars, opining long before the current controversy, have emphasized the necessary connection of impeachable wrongs to threats against the state itself. They have found that impeachment should be reserved for:

- "offenses against the government";[56]
- "political crime against the state";[57]
- "serious assaults on the integrity of the processes of government";[58]
- "wrongdoing convincingly established [and] so egregious that [the President's] continuation in office is intolerable";[59]
- "malfeasance or abuse of office,"[60] bearing a "functional relationship" to public office;[61]
- "great offense[s] against the federal government";[62]
- "acts which, like treason and bribery, undermine the integrity of government."[63]

The articles contain nothing approximating that level of wrongdoing. Indeed the House Managers themselves acknowledge that "the President's [alleged] perjury and obstruction do not directly involve his official conduct."[64]

b. To Make Impeachable Offenses of These Allegations would Forever Lower the Bar in a Way Inimical to the Presidency and to Our Government of Separated powers

These articles allege (1) sexual misbehavior, (2) statements about sexual misbehavior and (3) attempts to conceal the fact of sexual misbehavior. These kinds of wrongs are simply not subjects fit for impeachment. To remove a President on this basis would lower the impeachment bar to an unprecedented level and create a devastating precedent. As Professor Arthur Schlesinger, Jr., addressing this problem, has testified:

"Lowering the bar for impeachment creates a novel . . . revolutionary theory of impeachment, [and] . . . would send us on an adventure with ominous implications for the separation of powers that the Constitution established as the basis of our political order. It would permanently weaken the Presidency."[65]

The lowering of the bar that Professor Schlesinger described must stop here. Professor Jack Rakove made a similar point when he stated that "Impeachment [is] a

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[52] Statement of Professor Michael J. Gerhardt Before the House Subcommittee on the Constitution of the House Judiciary Committee Regarding the Background and History of Impeachment (November 9, 1998) at 13 ("*Subcommittee Hearings*").

[53] *Ibid.* (emphasis added).

[54] Statement of Historians.

[55] *See* Letter of 430 Law Professors to Messrs. Gingrich, Gephardt, Hyde and Conyers (released Nov. 6, 1998).

[56] Labovitz, *Presidential Impeachment* at 26.

[57] Berger, *Impeachment* at 61.

[58] Charles L. Black, Jr. *Impeachment: A Handbook* 38–39 (1974).

[59] Labovitz *Presidential Impeachment* at 110.

[60] Rotunda, 76 Ky. L.J. at 726.

[61] *Ibid.*

[62] Gerhardt, 68 Tex. L. Rev. at 85.

[63] Committee on Federal Legislation of the Bar Ass'n of the City of New York, *The Law of Presidential Impeachment* 18 (1974).

[64] House Br. at 109.

[65] *Subcommittee Hearings* (Written Statement of Arthur Schlesinger, Tr. at 2).

remedy to be deployed only in . . . unequivocal cases where . . . the insult to the constitutional system is grave."[66] Indeed, he said, there "would have to be a high degree of consensus on both sides of the aisle in Congress and in both Houses to proceed."[67]

Bipartisan consensus was, of course, utterly lacking in the House of Representatives. No civil officer—no President, no judge, no cabinet member—has ever been impeached by so narrow a margin as supported the articles exhibited here.[68] The closeness and partisan division of the vote reflect the constitutionally dubious nature of the charges.

When articles are based on sexual wrongdoing, and when they have passed only by the narrowest, partisan margin, the future of our constitutional politics is in the balance. The very stability of our Constitutional government may depend upon the Senate's response to these articles. Nothing about this case justifies removal of a twice-elected President, because no "high Crimes and Misdemeanors" are alleged.

5. Comparisons to Impeachment of Judges Are Wrong

The House Managers suggest that perjury *per se* is an impeachable offense because (1) several federal judges have been impeached and removed for perjury, and (2) those precedents control this case. *See* House Br. at 95–105. That notion is erroneous. It is blind both to the qualitative differences among different allegations of perjury and the very basic differences between federal judges and the President.

First, the impeachment and removal of a Federal judge, while a very solemn task, implicates very different considerations than the impeachment of a president. Federal judges are appointed without public approval and enjoy life tenure without public accountability. Consequently, they hold their offices under our Constitution only "during good behavior." Under our system, impeachment is the *only* way to remove a Federal judge from office—even a Federal judge sitting in jail.[69] By contrast, a president is elected by the Nation to a term, limited to a specified number of years, and he faces accountability in the form of elections.

Second, whether an allegedly perjurious statement rises to the level of an impeachable offense depends necessarily on the particulars of that statement, and the relation of those statements to the fulfillment of official responsibilities. In the impeachment of Judge Harry Claiborne, the accused had been convicted of filing false income tax returns.[70] As a judge, Claiborne was charged with the responsibility of hearing tax-evasion cases. Once convicted, he simply could not perform his official functions because his personal probity had been impaired such that he could no longer be an arbiter of others' oaths. His wrongdoing bore a direct connection to the performance of his judicial tasks. The inquiry into President Nixon disclosed similar wrongdoing, but the House Judiciary Committee refused to approve an article of impeachment against the President on that basis. The case of Judge Walter Nixon is similar. He was convicted of making perjurious statements concerning his *intervention in a judicial proceeding,* which is to say, employing the power and prestige of

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[66] *Subcommittee Hearings* (Written Statement of Professor Jack Rakove at 4).

[67] *Subcommittee Hearings* (Oral Testimony of Professor Rakove).

[68] The present articles were approved by margins of 228–206 (Article I) and 221–212 (Article II). All prior resolutions were approved by substantially wider margins in the House of Representatives. *See* Impeachments of the following civil officers: Judge John Pickering (1803) (45–8; Justice Samuel Chase (1804) (73–32; Judge James Peck (1830) 143–49; Judge West Humphreys (1862) (no vote available, but resolution of impeachment voted "without division," *see* 3 Hinds Precedents of the House of Representatives §2386); President Andrew Johnson (1868) (128–47; Judge James Belknap (1876) (unanimous); Judge Charles Swayne (1903) (unanimous); Judge Robert Archibald (1912) (223–1); Judge George English (1925) (306–62); Judge Harold Louderback (1932) (183–143); Judge Halsted Ritter (1933) (181–146); Judge Harry Claiborne (1986) (406–0); Judge Walter L. Nixon, Jr. (1988) (417–0); Judge Alcee L. Hastings (1988) (413–3). The impeachment resolution against Senator William Bount in 1797 was by voice vote and so no specific count was recorded.

[69] Former House Judiciary Committee Chairman Peter Rodino, during a recent judicial impeachment proceeding, cogently explained the unique position that Federal judges hold in our Constitutional system:

"The judges of our Federal courts occupy a unique position of trust and responsibility in our government: They are the only members of any branch that hold their office for life; they are purposely insulated from the immediate pressures and shifting currents of the body politic. *But with the special prerogative of judicial independence comes the most exacting standard of public and private conduct* . . . The high standard of behavior for judges is inscribed in article III of the Constitution, which provides that judges "shall hold offices during good behavior. . . ." (132 Cong. Rec. H4712 (July 22, 1986) (impeachment of Judge Harry E. Claiborne) (emphasis added).

[70] Proceedings of the United States Senate in the Impeachment Trial of Harry E. Claiborne, 99th Cong., 2d Sess., S. Doc. 99–48 at 291–98 (1986) ("*Claiborne Proceedings*").

his office to obtain advantage for a party.[71] Although the proceeding at issue was not in his court, his use of the judicial office for the private gain of a party to a judicial proceeding directly implicated his official functions. Finally, Judge Alcee Hastings was impeached and removed for making perjurious statements at his trial for conspiring to fix cases in his own court.[72] As with Judges Claiborne and Nixon, Judge Hastings' perjurious statements were immediately and incurably detrimental to the performance of his official duties. The allegations against the President, which (as the Managers acknowledge) "do not directly involve his official conduct," House Br. at 109, simply do not involve wrongdoing of gravity sufficient to foreclose effective performance of the Presidential office.

Impeachment scholar John Labovitz, writing of the judicial impeachment cases predating Watergate, observed that:

> "For both legal and practical reasons, th[e] [judicial impeachment] cases did not necessarily affect the grounds for impeachment of a president. The practical reason was that *it seemed inappropriate to determine the fate of an elected chief executive on the basis of law developed in proceedings directed at petty misconduct by obscure judges.* The legal reason was that the Constitution provides that judges serve during good behavior. . . . [T]he [good behavior] clause made a difference in judicial impeachments, confounding the application of these cases to presidential impeachment".[73]

Thus, the judicial precedents relied upon by the House Managers have only "limited force when applied to the impeachment of a President."[74]

The most telling rejoinder to the House's argument comes from President Ford. His definition of impeachable offenses, offered as a congressman in 1970 in connection with an effort to impeach Associate Justice William O. Douglas—that it is, in essence, "whatever the majority of the House of Representatives considers it to be"—has been cited. Almost never noted is the more important aspect of then-Congressman Ford's statement—that, in contrast to the life-tenure of judges, because presidents can be removed by the electorate, "to remove them in midterm . . . would indeed require crimes of the magnitude of treason and bribery."[75]

B. THE STANDARD OF PROOF

Beyond the question of what constitutes an impeachable offense, each Senator must confront the question of what standard the evidence must meet to justify a vote of "guilty." The Senate has, of course, addressed this issue before—most recently in the trials of Judge Claiborne and Judge Hastings. We recognize that the Senate chose in the Claiborne proceedings, and reaffirmed in the Hastings trial, not to impose itself any single standard of proof but, rather, to leave that judgment to the conscience of each Senator. Many Senators here today were present for the debate on this issue and chose a standard by which to test the evidence. For many Senators, however, the issue is a new one. And none previously has had to face the issue in the special context of a Presidential impeachment.

We argued before the House Judiciary Committee that it must treat a vote to impeach as, in effect, a vote to remove the President from office and that a decision of such moment ought not to be based on anything less than "clear and convincing" evidence. That standard is higher than the "preponderance of the evidence" test applicable to the ordinary civil case but lower than the beyond a reasonable doubt test applicable to a criminal case. Nonetheless, we felt that the clear and convincing standard was consistent with the grave responsibility of triggering a process that might result in the removal of a President. In fact, it had been the standard agreed upon by both Watergate Committee majority and minority counsel (as well as counsel for President Nixon) twenty-four years ago.

Certainly no lesser standard should be applied in the Senate. Indeed, we submit that the gravity of the decision the Senate must reach should lead each Senator to go further and ask whether the House has established guilt beyond a reasonable doubt.

Both lawyers and laymen too often treat the standard of proof as meaningless legal jargon with no application to the real world of difficult decisions. But it is

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[71] Proceedings of the United States Senate in the Impeachment Trial of Walter L. Nixon, Jr., 101st Cong., 1st Sess., S. Doc. 101–22 at 430–440 (1989) ("*Judge Nixon Proceedings*").

[72] *See* Proceedings of the United States Senate in the Impeachment Trial of Alcee L. Hastings, 101st Cong., 1st Sess., S. Doc. 101–18 (1989).

[73] Labovitz, *Presidential Impeachment* at 92–93 (emphasis added).

[74] Office of Senate Legal Counsel, *Memorandum on Impeachment Issues* at 26 (Oct. 7, 1988) (summarizing view of some commentators).

[75] 116 Cong. Rec. 11912, 11913, (1970).

much more than that. In our system of justice, it is the guidepost that shows the way through the labyrinth of conflicting evidence. It tells the factfinder to look within and ask: "Would I make the most important decisions of my life based on the degree of certainty I have about these facts?" In the unique legal-political setting of an impeachment trial, it protects against partisan overreaching, and it assures the public that this grave decision has been made with care. In sum, it is a disciplining force to carry into the deliberations.

This point is given added weight by the language of the Constitution. Article I, section 3, clause 6 of the United States Constitution gives to the Senate "the Power to *try* all Impeachments. . . . and no Person shall be *convicted* without the Concurrence of two thirds of the Members present." (Emphasis added.) Use of the words "try" and "convicted" strongly suggests that an impeachment trial is akin to a criminal proceeding and that the beyond-a-reasonable-doubt standard of criminal proceedings should be used. This position was enunciated in the Minority Views contained in the Report of the House Judiciary Committee on the impeachment proceedings against President Nixon (H. Rep. 93–1305 at 377–381) and has been espoused as the correct standard by such Senators as Robert Taft, Jr., Sam Ervin, Strom Thurmond and John Stennis.[76]

Even if the clear and convincing standard nonetheless is appropriate for judicial impeachments, it does not follow that it should be applied where the Presidency itself is at stake. With judges, the Senate must balance its concern for the independence of the judiciary against the recognition that, because judges hold life-time tenure, impeachment is the only available means to protect the public against those who are corrupt. On the other hand, when a President is on trial, the balance to be struck is quite different. Here the Senate is asked, in effect, to overturn the results of an election held two years ago in which the American people selected the head of one of the three coordinate branches of government. It is asked to take this action in circumstances where there is no suggestion of corruption or misuse of office—or any other conduct that places our system of government at risk in the two remaining years of the President's term, when once again the people will judge who they wish to lead them. In this setting, the evidence should be tested by the most stringent standard we know—proof beyond a reasonable doubt. Only then can the American people be confident that this most serious of constitutional decisions has been given the careful consideration it deserves.

IV. The President Should Be Acquitted on Article I

The evidence does not support the allegations of Article I.

A. Applicable Law

Article I alleges perjury, along with false and misleading statements, before a federal grand jury. Perjury is a statutory crime that is set forth in the United States Code at 18 U.S.C. § 1623.[77] Before an accused may be found guilty of perjury before a grand jury, a prosecutor must prove all elements of the offense.

In the criminal law context, § 1623 requires proof beyond a reasonable doubt of the following elements: that an accused (1) while under oath (2) knowingly (3) made a false statement as to (4) material facts. The "materiality" element is fundamental: it means that testimony given to a grand jury may be found perjurious only if it had a tendency to influence, impede, or hamper the grand jury's investigation. *See, e.g., United States* v. *Reilly,* 33 F.3d 1396, 1419 (3d Cir. 1994); *United States* v. *Barrett,* 111 F.3d 947, 953 (D.C. Cir. 1997). If an answer provided to a grand jury has no impact on the grand jury's investigation, or if it relates to a subject that the grand jury is not considering, it is incapable as a matter of law of being perjurious. Thus, alleged false testimony concerning details that a grand jury is not investigating cannot as a matter of law constitute perjury, since such testimony by definition is immaterial. *See, e.g., United States* v. *Lasater,* 535 F.2d 1041, 1048 (8th Cir. 1976) (where defendant admitted signing letter and testified to its purpose, his denial of actually writing letter was not material to grand jury investigation and was incapable of supporting perjury charge); *United States* v. *Pyle,* 156 F.2d 852, 856 (D.C. Cir. 1946) (details such as whether defendant "paid the rent on her Washington apartment, as she testified that she did" were "not pertinent to the issue

[76] *Claiborne Proceedings* at 106–107.

[77] Section 1623 provides in relevant part:

"(a) Whoever under oath . . . in any proceeding before or ancillary to any court or grand jury of the United States knowingly makes any false material declaration or makes or uses any other information . . . knowing the same to contain any false material declaration, shall be fined under this title or imprisoned not more than five years, or both." (18 U.S.C. § 1623(a) (1994)).

being tried;" therefore, "the false statement attributed to [defendant] was in no way material in the case in which she made it and did not constitute perjury within the meaning of the statute.") In other words, mere falsity—even knowing falsity—is not perjury if the statement at issue is not "material" to the matter under consideration.

An additional "element" of perjury prosecutions, at least as a matter of prosecutorial practice, is that a perjury conviction cannot rest solely on the testimony of one witness. In *United States* v. *Weiler,* 323 U.S. 606, 608–09 (1945), the Supreme Court observed that the "special rule which bars conviction for perjury solely upon the evidence of a single witness is deeply rooted in past centuries." While § 1623 does not literally incorporate the so-called "two-witness" rule, the case law makes clear that perjury prosecutions under this statute require a high degree of proof, and that prosecutors should not, as a matter of reason and practicality, try to bring perjury prosecutions based solely on the testimony of a single witness. As the Supreme Court has cautioned, perjury cases should not rest merely upon "an oath against an oath." *Id.* at 609.

Indeed, that is exactly the point that experienced former federal prosecutors made to the House Judiciary Committee. A panel of former federal prosecutors, some Republican, testified that they would not charge perjury based upon the facts in this case. For example, Mr. Thomas Sullivan, a former United States Attorney for the Northern District of Illinois, told the Committee that "the evidence set out in the Starr report would not be prosecuted as a criminal case by a responsible federal prosecutor." *See* Transcript of "Prosecutorial Standards for Obstruction of Justice and Perjury" Hearing (Dec. 9, 1998); *see generally* Minority Report at 340–47. As Mr. Sullivan emphasized, "because perjury and obstruction charges often arise from private dealings with few observers, the courts have required either two witnesses who testified directly to the facts establishing the crime, or, if only one witness testifies to the facts constituting the alleged perjury, that there be substantial corroborating proof to establish guilt." *See* Transcript of "Prosecutorial Standards for Obstruction of Justice and Perjury" Hearing (Dec. 9, 1998). The other prosecutors on the panel agreed. Mr. Richard J. Davis, who served as an Assistant United States Attorney for the Southern District of New York and as a Task Force Leader for the Watergate Special Prosecution Force, testified that "it is virtually unheard of to bring a perjury prosecution based solely on the conflicting testimony of two people." *Id.* A review of the perjury alleged here thus requires both careful scrutiny of the materiality of any alleged falsehood and vigilance against conviction merely on an "oath against an oath." *Weiler,* 323 U.S. at 609.

B. STRUCTURE OF THE ALLEGATIONS

Article I charges that the President committed perjury when he testified before the grand jury on August 17, 1998. It alleges he "willfully provided perjurious, false and misleading testimony to the grand jury concerning "one or more of the following: (1) the nature and details of his relationship with a subordinate Government employee; (2) prior perjurious, false and misleading testimony he gave in a Federal civil rights action brought against him; (3) prior false and misleading statements he allowed his attorney to make to a Federal judge in that civil rights action; and (4) his corrupt efforts to influence the testimony of witnesses and to impede the discovery of evidence in that civil rights action." As noted above, the article does not provide guidance on the particular statements alleged to be perjurious, false and misleading. But by reference to the different views in the House Committee Report, the presentation of House Majority Counsel David Schippers, the OIC Referral, and the Trial Memorandum of the House Managers, we have attempted to identify certain statements from which members of the House might have chosen.

Subpart (1) alleges that the President committed perjury before the grand jury about the details of his relationship with Ms. Lewinsky—including apparently such insignificant matters as mis-remembering the precise month on which certain inappropriate physical contact started, understating as "occasional" his infrequent inappropriate physical and telephone contacts with Ms. Lewinsky over a period of many months, characterizing their relationship as starting as a friendship, and touching Ms. Lewinsky in certain ways and for certain purposes during their intimate encounters.

Subpart (2) of Article I alleges that the President made perjurious, false and misleading statements to the grand jury when he testified about certain responses he had given in the *Jones* civil deposition. The House Managers erroneously suggest that in the grand jury President Clinton was asked about and reaffirmed his entire deposition testimony, including his deposition testimony about whether he had been alone with Ms. Lewinsky. *See* House Br. at 2, 60. That is demonstrably false. Those statements that the President did in fact make in the grand jury, by way of explain-

ing his deposition testimony, were truthful. Moreover, to the extent this subpart repeats allegations of Article II of the original proposed articles of impeachment, the full House of Representatives has explicitly considered and specifically rejected those charges, and their consideration would violate the impeachment procedures mandated by the Constitution.

Subparts (3) and (4) allege that the President lied in the grand jury when he testified about certain activities in late 1997 and early 1998. They are based on statements about conduct that the House Managers claim constitutes obstruction of justice under Article II and in many respects track Article II. *Compare* Article I (3) (perjury in the grand jury concerning alleged "prior false and misleading statements he allowed his attorney to make to a Federal judge") *with* Article II (5) (obstructing justice by "allow[ing] his attorney to make false and misleading statements to a Federal judge) and *compare* Article I (4) (perjury in the grand jury concerning alleged "corrupt efforts to influence testimony of witnesses and to impede the discovery of evidence") *with* Article II (3), (6), (7) (obstructing justice when he (3) "engaged in, encouraged, or supported a scheme to conceal evidence," *i.e.,* gifts; (6) "corruptly influence[d] the testimony" of Betty Currie; (7) "made false and misleading statements to potential witnesses in a Federal grand jury proceeding in order to corruptly influence the testimony of those witnesses"). These perjury allegations are without merit both because the obstruction charges upon which they are based are wrong and because the statements that President Clinton made in the grand jury about these charges are true. Because of the close parallel, and for sake of brevity in this submission, we have dealt comprehensively with these overlapping allegations in the next section addressing Article II (obstruction of justice), and address them only briefly in this section.

C. RESPONSE TO THE PARTICULAR ALLEGATIONS IN ARTICLE I

The president testified truthfully before the grand jury. There must be no mistake about what the President said. He admitted to the grand jury that he had engaged in an inappropriate intimate relationship with Ms. Lewinsky over a period of many months. He admitted to the grand jury that he had been alone with Ms. Lewinsky. He admitted to the grand jury that he had misled his family, his friends and staff, and the entire Nation about the nature of that relationship. No one who heard the President's August 17 speech or watched the President's videotaped grand jury testimony had any doubt that he had admitted to an ongoing physical relationship with Ms. Lewinsky.

The article makes general allegations about his testimony but does not specify alleged false statements, so direct rebuttal is impossible. In light of this uncertainty, we set forth below responses to the allegations that have been made by the House Managers, the House Committee, and the OIC, even though they were not adopted in the article, in an effort to try to respond comprehensively to the charges.

1. The President denies that he made materially false or misleading statements to the grand jury about "the nature and details of his relationship" with Monica Lewinsky

(a) Early in his grand jury testimony, the President specifically acknowledged that he had had a relationship with Ms. Lewinsky that involved "improper intimate contact." App. at 461. He described how the relationship began and how it ended early in 1997—long before any public attention or scrutiny.

In response to the first question about Ms. Lewinsky, the President read the following statement:

"When I was alone with Ms. Lewinsky on certain occasions in early 1996 and once in early 1997, I engaged in conduct that was wrong. These encounters did not consist of sexual intercourse. They did not constitute sexual relations as I understood that term to be defined at my January 17th, 1998 deposition. But they did involve inappropriate intimate contact.

"These inappropriate encounters ended, at my insistence, in early 1997. I also had occasional telephone conversations with Ms. Lewinsky that included inappropriate sexual banter.

"I regret that what began as a friendship came to include this conduct, and I take full responsibility for my actions.

"While I will provide the grand jury whatever other information I can, because of privacy considerations affecting my family, myself, and others, and in an effort to preserve the dignity of the office I hold, this is all I will say about the specifics of these particular matters.

"I will try to answer, to the best of my ability, other questions including questions about my relationship with Ms. Lewinsky; questions about my understanding of the

term 'sexual relations', as I understood it to be denied at my January 17th, 1998 deposition; and questions concerning alleged subornation of perjury, obstruction of justice, and intimidation of witnesses."

App. at 460–62. The President occasionally referred back to this statement—but only when asked very specific questions about his physical relationship with Ms. Lewinsky—and he otherwise responded fully to four hours of interrogation about his relationship with Ms. Lewinsky, his answers in the civil deposition, and his conduct surrounding the *Jones* deposition.

The articles are silent on precisely what statements the President made about his relationship with Ms. Lewinsky that were allegedly perjurious. But between the House Brief and the Committee Report, both drafted by the Managers, it appears there are three aspects of this prepared statement that are alleged to be false and misleading because Ms. Lewinsky's recollection differs—albeit with respect to certain very specific, utterly immaterial matters: *first*, when the President admitted that inappropriate conduct occurred "on certain occasions *in early 1996* and once in 1997," he allegedly committed perjury because in the Managers' view, the *first* instance of inappropriate conduct apparently occurred a few months prior to "early 1996," *see* House Br. at 53; *second,* when the President admitted to inappropriate conduct "*on certain occasions* in early 1996 and once in 1997," he allegedly committed perjury because, according to the House Committee, there were *eleven* total sexual encounters and the term "on certain occasions" implied something other than eleven. *see* Committee Report at 34; and *third,* when the President admitted that he "had *occasional* telephone conversations with Ms. Lewinsky that included sexual banter," he allegedly committed perjury because, according to the House Committee (although not Ms. Lewinsky), seventeen conversations may have included sexually explicit conversation, *ibid*. Apart from the fact that the record itself refutes some of the allegations (for example, seven of the seventeen calls were only "possible," according even to the OIC, App. at 116–26, and Ms. Lewinsky recalled fewer than seventeen, App. at 744), simply to state them is to reveal their utter immateriality.[78]

The President categorically denies that his prepared statement was perjurious, false and misleading in any respect. He offered his written statement to focus the questioning in a manner that would allow the OIC to obtain the information it needed without unduly dwelling on the salacious details of his relationship. It preceded almost four hours of follow-up questions about the relationship. It is utterly remarkable that the Managers now find fault even with the President's very painful public admission of inappropriate conduct.

In any event, the charges are totally without merit. The Committee Report takes issue with the terms "on certain occasions" and "occasional," but neither phrase implies a definite or maximum number. "On certain occasions"—the phrase introducing discussion of the physical contacts—has virtually no meaning other than "it sometimes happened." It is unfathomable what objective interpretation the Majority gives to this phrase to suggest that it could be false. An attack on the phrase "occasional"—the phrase introducing discussion of the inappropriate telephone contacts—is little different. Dictionaries define "occasional" to mean "occurring at irregular or infrequent intervals" or "now and then."[79] It is a measure of the Committee Report's extraordinary overreaching to suggest that the eleven occasions of intimate contact alleged by the House Majority over well more than a year did not occur, by any objective reading, "on certain occasions." And since even the OIC Referral acknowledges that the inappropriate telephone contact occurred not "at least 17 times" (as the Committee Report and the Managers suggest, Committee Report at 8; House Br. at 11) but between 10 and 15 times over a 23-month period,[80] "occasional" would surely seem not just a reasonable description but the correct one.

Finally, these squabbles are utterly immaterial. Even if the President and Ms. Lewinsky disagreed as to the precise number of such encounters, it is of no consequence whatsoever to anything, given his admission of their relationship. This is precisely the kind of disagreement that the law does not intend to capture as perjury.

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[78] Even the OIC Referral did not allege perjury based on these latter two theories and mentioned the first only briefly.

[79] *Webster's Collegiate Dictionary (*10th ed. 1997) p. 803; *see also Webster's II New Riverside Dictionary* (1988) p. 812 ("occurring from time to time; infrequent"); *Chambers English Dictionary* (1988 ed.) p. 992 ("occurring infrequently, irregularly, now and then"); *The American Heritage Dictionary* (2d Coll. ed.) ("occurring from time to time"); *Webster's New World Dictionary* (3d Coll. ed.) p. 937 ("of irregular occurrence; happening now and then; infrequent").

[80] The OIC chart of contacts between Ms. Lewinsky and the President identifies ten phone conversations "including phone sex" and seven phone conversations "possibly" including phone sex. App. at 116–26.

The date of the first intimate encounter is also totally immaterial. Having acknowledged the relationship, the President had no conceivable motive to misstate the date on which it began. The Managers assert that the President committed perjury when he testified about when the relationship began, but they offer no rationale for why he would have done so.[81] The President had already made a painful admission. Any misstatement about when the intimate relationship began (if there was a misstatement) cannot justify a charge of perjury, let alone the removal of the President from office. As Chairman Hyde himself stated in reference to this latter allegation, "It doesn't strike me as a terribly serious count." Remarks of Chairman Hyde at Perjury Hearing of December 1, 1998.

(b) The Managers also assert that the President lied when, after admitting that he had an inappropriate sexual relationship with Ms. Lewinsky, he maintained that he did not touch Ms. Lewinsky in a manner that met the definition used in the *Jones* deposition. *See* House Br. at 54. The President admits that he engaged in inappropriate physical contact with Ms. Lewinsky, but has testified that he did not engage in activity that met the convoluted and truncated definition he was presented in the *Jones* deposition.[82]

It is important to note that this *Jones* definition was not of the President's making. It was one *provided to him* by the Jones' lawyers for their questioning of him. Under that definition, oral sex performed by Ms. Lewinsky on the President would not constitute sexual relations, while touching certain areas of Ms. Lewinsky's body with the intent to arouse her would meet the definition. The President testified in the grand jury that [he] believed that oral sex performed on him fell outside the *Jones* definition. App. at 544.[83] As strange as this may sound, a totally reasonable reading of the definition supports that conclusion, as many commentators have agreed.[84]

This claim comes down to an oath against an oath about immaterial details concerning an acknowledged wrongful relationship.

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[81] The Committee Report did not adopt the baseless surmise of the OIC Referral, *i.e.,* that the President lied about the starting date of his relationship because Ms. Lewinsky was still an intern at the time, whereas she later became a paid employee. For good reason. The only support offered by the Referral for this conjecture is a comment Ms. Lewinsky attributes to the President in which he purportedly said that her pink "intern pass" "might be a problem." Referral at 149–50. But even Ms. Lewinsky indicated that the President was not referring to her intern status, but rather was noting that, as an intern with a pink "intern pass," she had only limited access to the West Wing of the White House. App. at 1567 (Lewinsky FBI 302 8/24/98). Moreover, Ms. Lewinsky had in fact become an employee by late 1995, so even under the OIC theory the President could have acknowledged such intimate contact in 1995.

[82] At the deposition, the Jones attorneys presented a broad, three-part definition of the term "sexual relations" to be used by them in the questioning. Judge Wright ruled that two parts of the definition were "too broad" and eliminated them. Dep. at 22. The President, therefore, was presented with the following definition (as he understood it to have been amended by the Court):

Definition of Sexual Relations—

For the purposes of this deposition, a person engages in "sexual relations" when the person knowingly engages in or causes—

(1) contact with the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to arouse or gratify the sexual desire of any person;

~~(2) contact between any part of the person's body or an object and the genitals and anus of another person; or~~

~~(3) contact between the genitals or anus of the person and any part of another person's body.~~

~~"Contact" means intentional touching, either directly or through clothing.~~

[83] The Managers erroneously suggest that the President's explanation of his understanding of the *Jones* deposition definition of "sexual relations" is a recent fabrication rather than an accurate account of his view at the time of the deposition. House Br. at 54–55. To support this contention, the Managers, among other meritless arguments, point to a document produced by the White House entitled "January 24, 1998 Talking Points," stating that oral sex would constitute a sexual relationship for the President. *Id.* at 55. This document, however, was not created, reviewed or approved by the President and did not represent his views. It is irrelevant to the issue at hand for the additional reason that it does not speak by its own terms to the meaning of the contorted definition of "sexual relations" used in the *Jones* deposition.

[84] *See, e.g.,* Perjury Hearing of December 1, 1998 (Statement of Professor Stephen A. Saltzburg at 2) ("That definition defined certain forms of sexual contact as sexual relations but, for reasons known only to the Jones lawyers, limited the definition to contact with any person for the purpose of gratification."); MSNBC Internight, August 12, 1998 (Cynthia Alksne) ("[W]hen the definition finally was put before the president, it did not include the receipt of oral sex"); "DeLay Urges a Wait For Starr's Report," *The Washington Times* (August 31, 1998) ("The definition of sexual relations, used by lawyers for Paula Jones when they questioned the president, was loosely worded and may not have included oral sex"); "Legally Accurate," *The National Law Journal* (August 31, 1998) ("Given the narrowness of the court-approved definition in [the *Jones*] case, Mr. Clinton indeed may not have perjured himself back then if, say, he received oral sex but did not reciprocate sexually").

2. The President denies that he made perjurious, false and misleading statements to the grand jury about testimony he gave in the Jones case

First, it is important to understand that the allegation of Article I that the President "willfully provided false and misleading testimony to the grand jury concerning . . . prior perjurious, false and misleading testimony he gave in" the *Jones* deposition is premised on a misunderstanding of the President's grand jury testimony. The President was not asked to, and he did not, reaffirm his entire *Jones* deposition testimony during his grand jury appearance. For example, contrary to popular myth and the undocumented assertion of the House Managers, House Br. at 2, the President was never even asked in the grand jury about his answer to the deposition question whether he and Ms. Lewinsky had been "together alone in the Oval Office." Dep. at 52–53,[85] and he therefore neither reaffirmed it nor even addressed it. In fact, in the grand jury he was asked only about a small handful of his answers in the deposition. As is demonstrated below, his explanation of these answers were not reaffirmations or in any respect evasive or misleading—they were completely truthful, and they do not support a perjury allegation.

The extent to which this allegation of the House Majority misses the mark is dramatically apparent when it is compared with the OIC's Referral. The OIC did not charge that the President's statements about his prior deposition testimony were perjurious (apart from the charge discussed above concerning the nature and details of his relationship with Ms. Lewinsky).[86] *See* OIC Ref. at 145. It would be remarkable to contemplate charges beyond those brought by the OIC, particularly in the context of a perjury claim where the OIC chose what to ask the President and itself conducted the grand jury session.

The House Managers point to a single statement made by President Clinton in the grand jury to justify their contention that every statement from his civil deposition is now fair game. House Br. at 60. Specifically, the House Managers rely on President Clinton's explanation in the grand jury of his state of mind during the *Jones* deposition: "My goal in this deposition was to be truthful, but not particularly helpful . . . I was determined to walk through the mine field of this deposition without violating the law, and I believe I did." App. at 532. In addition to being a true statement of his belief as to his legal position, this single remark plainly was not intended as and was not a broad reaffirmation of the accuracy of all the statements the President made during the *Jones* deposition. Indeed, given that he told the grand jury that he had an intimate relationship with Ms. Lewinsky during which he was alone with her, no one who heard the grand jury testimony could have understood it to be the unequivocal reaffirmation that is alleged.

The Managers charge that the President did not really mean it when he told the grand jury how he was trying to be literally truthful in the *Jones* deposition without providing information about his relationship with Ms. Lewinsky. The President had endeavored to navigate the deposition without having to make embarrassing admissions about his inappropriate, albeit consensual, relationship with Ms. Lewinsky. And to do this, the President walked as close to the line between (a) truthful but evasive or non-responsive testimony and (b) false testimony as he could without crossing it. He sought, as he explained to the grand jury, to give answers that were literally accurate, even if, as a result, they were evasive and thus misleading. We repeat: what is at issue here is not the underlying statements made by the President in the deposition, but the President's *explanations* in the grand jury of his effort to walk a fine line. Anyone who reads or watches that deposition *knows* the President was in fact trying to do precisely what he has admitted—to give the lawyers grudging, unresponsive or even misleading answers without actually lying. However successful or unsuccessful he might have been, there is no evidence that controverts the fact that this was indeed the President's intention.

An examination of the statements that the President actually did make in the grand jury about his deposition testimony further demonstrates the lack of merit in this article. In the grand jury, the President only was asked about three areas of his deposition testimony that were covered in the failed impeachment article al-

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[85] The only questions the OIC asked the President about being alone with Ms. Lewinsky did not reference the deposition at all. Instead, the OIC asked the President to elaborate on his acknowledgement in his prepared statement before the grand jury that he had been alone with Ms. Lewinsky, App. at 481, and to explain why he made a statement, "I was never alone with her" *to Ms. Currie* on January 18th. *See, e.g.,* App. at 583.

[86] Specifically, the Referral alleges that the President lied when he testified (1) that "he believed that oral sex was not covered by any of the terms and definitions for sexual activity used at the *Jones* deposition"; (2) that their physical contact was more limited than Ms. Lewinsky's testimony suggests; and (3) that their intimate relationship began in early 1996 and not late 1995. *Id.* at 148–49.

leging perjury in the civil deposition.[87] The first topic was the nature of any intimate contact with Ms. Lewinsky and has already been addressed above.

The second topic was the President's testimony about his knowledge of gifts he exchanged with Ms. Lewinsky. In his grand jury testimony, the President had the following exchange with the OIC:

> Q: When you testified in the Paula Jones case, this was only two and a half weeks after you had given her these six gifts, you were asked, at page 75 in your deposition, lines 2 through 5, "Well, have you ever given any gifts to Monica Lewinsky?" And you answered, "I don't recall."
>
> And you were correct. You pointed out that you actually asked them, for prompting, "Do you know what they were?"
>
> A: I think what I meant there was I don't recall what they were, not that I don't recall whether I had given them. And then if you see, they did give me these specifics, and I gave them quite a good explanation here. I remembered very clearly what the facts were about The Black Dog. . . .

App. at 502–03. The President's explanation that he could not recall the exact gifts that he had given Ms. Lewinsky and that he affirmatively sought prompting from the *Jones* lawyers is entirely consistent with his deposition testimony. This record plainly does not support a charge of perjury.

The third and last topic was the President's deposition testimony that Ms. Lewinsky's affidavit statement denying having a sexual relationship with the President was correct:

> Q: And you indicated that it [Ms. Lewinsky's affidavit statement that she had no sexual relationship with him] was absolutely correct.
>
> A: I did. . . . I believe at the time that she filled out this affidavit, if she believed that the definition of sexual relationship was two people having intercourse, then this is accurate. And I believe that this is the definition that most ordinary Americans would give it. . . .

App. at 473. The President's grand jury testimony was truthful. As Ms. Lewinsky and Ms. Tripp discussed long before any of this matter was public, this was in fact Ms. Lewinsky's definition of "sex" and apparently the President's as well. *See* Supp. at 2664 (10/3/97 Tape); *see also* App. at 1558 (Lewinsky FBI 302 8/19/98). There is no evidence whatever that the President did not believe this definition of sexual relations, and his belief finds support in dictionary definitions, the courts and commentators.[88] Moreover, the record establishes that Ms. Lewinsky shared this view.[89] Since the President's grand jury testimony about his understanding is corroborated both by dictionaries and by his prior statements to Ms. Lewinsky, it simply cannot be labeled "wrong" or, more seriously, "perjurious."

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[87] The proposed article of impeachment alleging perjury in the civil deposition, like the two that are before the Senate, did not identify any specific instances of false testimony, but we have made our comparison with the Committee Report's elaboration of the deposition perjury article as it undoubtedly represents the largest universe of alleged perjurious statements.

[88] As one court has stated, "[i]n common parlance the terms 'sexual intercourse' and 'sexual relations' are often used interchangeably." *J.Y.* v. *D.A,* 381 N.E.2d 1270, 1273 (Ind. App. 1978). Dictionary definitions make the same point:

- Webster's Third New International Dictionary (1st ed. 1981) at 2082, defines "sexual relations" as "coitus;"
- Random House Webster's College Dictionary (1st ed. 1996) at 1229, defines "sexual relations" as "sexual intercourse; coitus;"
- Merriam-Webster's Collegiate Dictionary (10th ed. 1997) at 1074, defines "sexual relations" as "coitus;"
- Black's Law Dictionary (Abridged 6th ed. 1991) at 560, defines "intercourse" as "sexual relations;" and
- Random House Compact Unabridged Dictionary (2d ed. 1996) at 1775, defines "sexual relations" as "sexual intercourse; coitus."

[89] Ms. Lewinsky took the position early on that her contact with the President did not constitute "sex" and reaffirmed that position even after she had received immunity and began cooperating with the OIC. For example, in one of the conversations surreptitiously taped by Ms. Tripp, Ms. Lewinsky explained to Ms. Tripp that she "didn't have sex" with the President because "[h]aving sex is having intercourse." Supp. at 2664; *see also* Supp. at 1066 (grand jury testimony of Ms. Neysa Erbland stated that Ms. Lewinsky had said that the President and she "didn't have sex"). Ms. Lewinsky reaffirmed this position even after receiving immunity, stating in an FBI interview that "her use of the term 'having sex' means having intercourse. . . ." App. at 1558 (Lewinsky FBI 302 8/19/98). Likewise, in her original proffer to the OIC, she wrote, "Ms. L[ewinsky] was comfortable signing the affidavit with regard to the 'sexual relationship' because she could justify to herself that she and the Pres[ident] did not have sexual intercourse." App. at 718 (2/1/98 Proffer).

The President did not testify falsely and perjuriously in the grand jury about his civil deposition testimony.

3. The President denies that he made perjurious, false and misleading statements to the grand jury about the statements of his attorney to Judge Wright during the Jones deposition

It is remarkable that Article I contains allegations such as this one that even the OIC, which conducted the President's grand jury appearance, chose not to include in the Referral (presumably because there was no "substantial and credible information" to support the claim). Subpart (3) appears to allege that the President lied in his grand jury testimony when he characterized his state of mind in his civil deposition as his lawyer described the Lewinsky affidavit as meaning "there is no sex of any kind in any manner, shape or form." Dep. at 53–54. Specifically, the House Managers appear to base their perjury claim on President Clinton's grand jury statement that "I'm not even sure I paid attention to what he [Mr. Bennett] was saying." House Br. at 62.

The House Brief takes issue with President Clinton's statement that he was "not paying a great deal of attention to this exchange" because, it alleges, the "videotape [of the deposition] shows the President looking directly at Mr. Bennett, paying close attention to his argument to Judge Wright." *Ibid.* While it is true that the videotape shows the President staring in what is presumably Mr. Bennett's direction, there is no evidence whatsoever that he was indeed "paying close attention" to the lengthy exchange. Notably absent from the videotape is any action on the part of the President that could be read as affirming Mr. Bennett's statement, such as a nod of the head, or any other activity that could be used to distinguish between a fixed stare and true attention to the complicated sparring of counsel. The President was a witness in a difficult and complex deposition and, as he testified, he was "focussing on [his] answers to the questions." App. at 477. It is a safe bet that the common law has never seen a perjury charge based on so little.[90]

4. The President denies that he made perjurious, false and misleading statements to the grand jury when he denied attempting "to influence the testimony of witnesses and to impede the discovery of evidence" in the Jones case

The general language of the final proviso of Article I, according to the House Managers, is meant to signify a wide range of allegations, *see* House Br. at 60–69, although none were thought sufficiently credible to be included in the OIC Referral. These allegations were not even included in the summary of the Starr evidence presented to the Committee on October 5, 1998, by House Majority Counsel Schippers. They are nothing more than an effort to inflate the perjury allegations by converting every statement that the President made about the subject matter of Article II into a new count for perjury. As the discussion of Article II establishes, the President did not attempt to obstruct justice. Thus, his explanations of his statements in the grand jury were truthful.

The House Brief asserts that the President committed perjury with respect to three areas of his grand jury testimony about the obstruction allegations. These claims are addressed thoroughly in the next section along with the corresponding Article II obstruction claims, and they are addressed in a short form here. The first claim is that the President committed perjury "when he testified before the grand jury that he recalled telling Ms. Lewinsky that if Ms. Jones' lawyers requested the gifts exchanged between Ms. Lewinsky and the President, she should provide them." House Br. at 63. The House Managers contest the truthfulness of this statement by asserting that the President was responsible for Ms. Lewinsky's transfer of gifts to Ms. Currie in late December. In other words, if the obstruction claim is true, they allege, this statement is not true. As is laid out in greater detail in the next section, the House Manager's view of this matter ignores a wealth of evidence establishing that the idea to conceal some of the gifts she had received originated with, and was executed by, Ms. Lewinsky. *See e.g.,* Supp. at 557 (Currie GJ 1/27/98); Supp. at 531 (Currie FBI 302 1/24/98); Supp. at 582 (Currie GJ 5/6/98); App. at 1122 (Lewinsky GJ 8/20/98); *see also* App. at 1481 ("LEWINSKY . . . suggested to the President that Betty Currie hold the gifts") (Lewinsky FBI 302 8/1/98).

Second, the House Managers contend that the President provided perjurious testimony when he explained to the grand jury that he was trying to "refresh" his recollection when he spoke with Betty Currie on January 18, 1998 about his relationship with Ms. Lewinsky. House Br. at 65. The House Managers completely ignore the numerous statements that Ms. Currie makes in her testimony that support the

[90] This allegation is nearly identical to the allegation of Article II(5), and, for the sake of brevity, it is addressed at greater length in the response to Article II, below.

President's assertion that he was merely trying to gather information. For example, Ms. Currie stated in her first interview with the OIC that "Clinton then mentioned some of the questions he was asked at his deposition. Currie advised the way Clinton phrased the queries, they were both statements and questions at the same time." Supp. at 534 (Currie FBI 302 1/24/98). Ms. Currie's final grand jury testimony on this issue also supports the President's explanation of his questioning:

Q: Now, back again to the four statements that you testified the President made to you that were presented as statements, did you feel pressured when he told you those statements?
A: *None whatsoever.*
Q: What did you think, or what was going through your mind about what he was doing?
A: *At that time I felt that he was—I want to use the word shocked or surprised that this was an issue, and he was just talking.*
Q: That was your impression that he wanted you to say—because he would end each of the statements with "Right?," with a question.
A: *I do not remember that he wanted me to say "Right." He would say "Right" and I could have said, "Wrong."*
Q: But he would end each of those questions with a "Right?" and you could either say whether it was true or not true?
A: *Correct.*
Q: Did you feel any pressure to agree with your boss?
A: *None.*

Supp. at 668 (Currie GJ 7/22/98) (emphasis added).

Ms. Currie's testimony supports the President's assertion that he was looking for information as a result of his deposition. There is no basis to doubt the President's explanation that his expectation of a media onslaught prompted the conversation. *See* App. at 583. Indeed, neither the testimony of Ms. Currie nor that of the President—the only two participants in this conversation—conceivably supports the inference that he had any other intent. The House Managers' contention that the President's explanation to the grand jury was perjurious totally disregards the testimony of the only two witnesses with first-hand knowledge and has no basis in fact or in the evidence.

Finally, the House Managers contend that President Clinton "lied about his attempts to influence the testimony of some of his top aides." House Br. at 68. The basis for this charge appears to be the President's testimony that, although he said misleading things to his aides about his relationship with Ms. Lewinsky, he *tried* to say things that were true. *Id.* at 69. Once again, the record does not even approach a case for perjury. The President acknowledged that he misled; he tried, however, not to lie. It is a mystery how the Managers could try to disprove this simple statement of intent.

V. The President Should be Acquitted on Article II

The evidence does not support the allegations of Article II.

A. Applicable Law

Article II alleges obstruction of justice, a statutory crime that is set forth in 18 U.S.C. § 1503, the "Omnibus Obstruction Provision." In the criminal law context, § 1503 requires proof of the following elements: (1) that there existed a pending judicial proceeding; (2) that the accused knew of the proceeding; and (3) that the defendant acted "corruptly" with the specific intent to obstruct or interfere with the proceeding or due administration of justice. *See, e.g., United States* v. *Bucey*, 876 F.2d 1297, 1314 (7th Cir. 1989). False statements alone cannot sustain a conviction under § 1503. *See United States* v. *Thomas*, 916 F.2d 647, 652 (11th Cir. 1990).[91]

[91] 18 U.S.C. § 1512 covers witness tampering. It is clear that the allegations in Article II could not satisfy the elements of § 1512. That provision requires proof that a defendant knowingly engaged in intimidation, physical force, threats, misleading conduct, or corrupt persuasion with intent to influence, delay, or prevent testimony or cause any person to withhold objects or documents from an official proceeding. It is clear from the case law that "misleading conduct" as contemplated by § 1512 does not cover scenarios where an accused urged a witness to give false testimony without resorting to coercive or deceptive conduct. *See, e.g., United States* v. *Kulczyk*, 931 F.2d 542, 547 (9th Cir. 1991) (reversing conviction under § 1512 because "there is simply no support for the argument that [defendant] did anything other than ask the witnesses to lie"); *United States* v. *King*, 762 F.2d 232, 237 (2d Cir. 1985) ("Since the only allegation in the indictment as to the means by which [defendant] induced [a witness] to withhold testimony was that [the defendant] misled [the witness], and since the evidence failed totally to support any infer-

B. STRUCTURE OF THE ALLEGATIONS

Article II exhibited by the House of Representatives alleges that the President "has prevented, obstructed, and impeded the administration of justice, and has to that end engaged personally, and through his subordinates and agents, in a course of conduct or scheme designed to delay, impede, cover up, and conceal the existence of evidence and testimony" in the *Jones* case. The Article alleges that the President did so by engaging in "one or more of the following acts": the President (1) corruptly encouraged Ms. Lewinsky "to execute a sworn affidavit . . . that he knew to be perjurious, false and misleading"; (2) "corruptly encouraged Ms. Lewinsky to give perjurious, false, and misleading testimony if and when called to testify personally" in the *Jones* case; (3) "corruptly engaged in, encouraged, or supported a scheme to conceal evidence that had been subpoenaed" in the *Jones* case, namely gifts given by him to Ms. Lewinsky; (4) "intensified and succeeded in an effort to secure job assistance" for Ms. Lewinsky between December 7, 1997 and January 14, 1998, "in order to corruptly prevent [her] truthful testimony" in the *Jones* case; (5) "corruptly allowed his attorney to make false and misleading statements" to Judge Susan Webber Wright at the *Jones* deposition; (6) "related a false and misleading account of events" involving Ms. Lewinsky to Betty Currie, a "potential witness" in the *Jones* case, "in order to corruptly influence" her testimony; and (7) made false and misleading statements to certain members of his staff who were "potential" grand jury witnesses, in order to corruptly influence their testimony.

As noted above, this article essentially duplicates some of the perjury allegations of Article I (4): Article II alleges particular acts of obstruction while Article I (4) alleges that the President lied in the grand jury when he discussed those allegations.[92] Both sets of allegations are unsupported. Our discussion here of the details of these charges will, as well, serve in part as our response to the allegations in Article I (4).

C. RESPONSE TO THE PARTICULAR ALLEGATIONS IN ARTICLE II

1. The President denies that on or about December 17, 1997, he "corruptly encouraged" Monica Lewinsky "to execute a sworn affidavit in that proceeding that he knew to be perjurious, false and misleading"

Article II (1) alleges that the President "corruptly encouraged" Monica Lewinsky "to execute a sworn affidavit in that proceeding that he knew to be perjurious, false and misleading." The House Managers allege that during a December 17 phone conversation, Ms. Lewinsky asked the President what she could do if she were subpoenaed in the *Jones* case and that the President responded, "Well, maybe you can sign an affidavit." House Br. at 22. This admitted statement by the President of totally lawful conduct is *the Managers' entire factual basis* for the allegation in Article II (1).

The Managers do not allege that the President ever suggested to Ms. Lewinsky she should file a *false* affidavit or otherwise told her what to say in the affidavit. Indeed they could not, because Ms. Lewinsky has repeatedly and forcefully denied any such suggestions:

- "Neither the Pres[ident] nor Mr. Jordan (or anyone on their behalf) asked or encouraged Ms. L[ewinsky] to lie." App. at 718 (2/1/98 Proffer).
- "[N]o one ever asked me to lie and I was never promised a job for my silence." App. at 1161 (Lewinsky GJ 8/20/98).
- "Neither the President nor Jordan ever told Lewinsky that she had to lie." App. at 1398 (Lewinsky FBI 302 7/27/98).
- "Neither the President nor anyone ever directed Lewinsky to say anything or to lie. . . ." App. at 1400 (Lewinsky FBI 302 7/27/98).
- "I think I told [Linda Tripp] that—you know at various times the President and Mr. Jordan had told me I have to lie. That wasn't true." App. at 942 (Lewinsky GJ 8/6/98).

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ence that [the witness] was, or even could have been, misled, the conduct proven by the government was not within the terms of § 1512."). Deceit is thus the gravamen of an obstruction of justice charge that is predicated on witness tampering.

[92] *Compare* Article I (4) (perjury in the grand jury concerning alleged "corrupt efforts to influence testimony of witnesses and to impede the discovery of evidence") with Article II (1)–(3), (6) (obstructing justice when he (1) "encouraged witness . . . to execute a [false] sworn affidavit"; (2) "encouraged a witness . . . to give perjurious, false and misleading testimony"; (3) "engaged in, encouraged, or supported a scheme to conceal evidence"; (6) "corruptly influence[d] the testimony" of Betty Currie). *Compare also* Article I (3) (perjury in the grand jury concerning alleged "prior false and misleading statements he allowed his attorney to make to a Federal judge") with Article II (5) (obstructing justice by "allow[ing] his attorney to make false and misleading statements to a Federal judge).

In an attempt to compensate for the total lack of evidence supporting their theory,[93] the Managers offer their view that "both parties knew the affidavit would have to be false and misleading in order to accomplish the desired result." House Br. at 22; *see also* Committee Report at 65 (the President "knew [the affidavit] would have to be false for Ms. Lewinsky to avoid testifying"). But there is no evidence to support such bald conjecture, and in fact the opposite is true. Both Ms. Lewinsky and the President testified that, given the particular claims in the *Jones* case, they thought a truthful, limited affidavit might establish that Ms. Lewinsky had nothing relevant to offer. The President explained to the grand jury why he believed that Ms. Lewinsky would execute a truthful but limited affidavit that would have established that she was not relevant to the *Jones* case:[94]

• "But I'm just telling you that it's certainly true what she says here, that we didn't have—there was no employment, no benefit in exchange, there was nothing having to do with sexual harassment. And if she defined sexual relationship in the way I think most Americans do, meaning intercourse, then she told the truth." App. at 474.

• "You know, I believed then, I believe now, that Monica Lewinsky could have sworn out an honest affidavit, that under reasonable circumstances, and without the benefit of what Linda Tripp did to her, would have given her a chance not to be a witness in this case." App. at 521.

• "I believed then, I believe today, that she could execute an affidavit which, under reasonable circumstances with fair-minded, nonpolitically-oriented people, would result in her being relieved of the burden to be put through the kind of testimony that, thanks to Linda Tripp's work with you and with the Jones lawyers, she would have been put through. I don't think that's dishonest. I don't think that's illegal." App. at 529.

• "But I also will tell you that I felt quite comfortable that she could have executed a truthful affidavit, which would not have disclosed the embarrassing details of the relationship that we had had, which had been over for many, many months by the time this incident occurred." App. at 568–69.

• "I've already told you that I felt strongly that she could issue, that she could execute an affidavit that would be factually truthful, that might get her out of having to testify. . . . And did I hope she'd be able to get out of testifying on an affidavit? Absolutely. Did I want her to execute a false affidavit? No, I did not." App. at 571.

The *Jones* case involved allegations of a nonconsensual sexual solicitation. Ms. Lewinsky's relationship with the President was consensual, and she knew nothing about the factual allegations of the *Jones* case.

Ms. Lewinsky similarly recognized that an affidavit need not be false in order to accomplish the purpose of avoiding a deposition:

• LEWINSKY told TRIPP that the purpose of the affidavit was to avoid being deposed. LEWINSKY advised that *one does this by giving a portion of the whole story*, so the attorneys do not think you have anything of relevance to their case. App. at 1420 (Lewinsky FBI 302 7/29/98) (emphasis added).

• LEWINSKY advised the goal of an affidavit is to be *as benign as possible*, so as to avoid being deposed. App. at 1421 (Lewinsky FBI 302 7/29/98) (emphasis added).

• I thought that signing an affidavit could range from anywhere—the point of it would be to deter or to prevent me from being deposed and so that that could range from anywhere between *maybe just somehow mentioning, you know, innocuous things* or going as far as maybe having to deny any kind of a relationship. App. at 842 (Lewinsky GJ 8/6/98) (emphasis added).

The Committee Report argued that Ms. Lewinsky must have known that the President wanted her to lie because he never told her to fully detail their relationship in her affidavit and because an affidavit fully detailing the "true nature" of their relationship would have been damaging to him in the *Jones* case. Committee

[93] The myth that the President told Ms. Lewinsky to lie in her affidavit springs not from the evidence but from the surreptitiously recorded Tripp tapes. But as Ms. Lewinsky explained to the grand jury, many of the statements she made to Ms. Tripp—including on this subject—were not true: "I think I told [Linda Tripp] that—you know at various times the President and Mr. Jordan had told me I have to lie. *That wasn't true.*" App. at 942 (Lewinsky GJ 8/6/98).

[94] Indeed, the Committee Report alleges without support that the President lied to the grand jury when he indicated his *belief* that Ms. Lewinsky could indeed have filed a truthful but limited affidavit that might have gotten her out of testifying in the *Jones* case. Article I (4). This claim fails for the reasons discussed in the text.

Report at 65. The Managers wisely appear to have abandoned this argument.[95] Ms. Lewinsky plainly was under no obligation to volunteer to the Jones lawyers every last detail about her relationship with the President—and the failure of the President to instruct her to do so is neither wrong nor an obstruction of justice. A limited, truthful affidavit might have established that Ms. Lewinsky was not relevant to the *Jones* case. The suggestion that perhaps Ms. Lewinsky could submit an affidavit in lieu of a deposition, as the President knew other potential deponents in the *Jones* case had attempted to do, in order to avoid the expense, burden, and humiliation of testifying in the *Jones* case was entirely proper. The notion that the President of the United States could face removal from office not because he told Monica Lewinsky to lie, or encouraged her to do so, but because he did not affirmatively instruct her to disclose every detail of their relationship to the *Jones* lawyers is simply not supportable.

Moreover, there is significant evidence in the record that, at the time she executed the affidavit, Ms. Lewinsky honestly believed that her denial of a sexual relationship was accurate given what she believed to be the definition of a "sexual relationship":

• "I never even came close to sleeping with [the President] . . . We didn't have sex . . . Having sex is having intercourse. That's how most people would—" Supp. at 2664 (Lewinsky-Tripp tape 10/3/97).[96]

• "Ms. L[ewinsky] was comfortable signing the affidavit with regard to the sexual relationship because she could justify to herself that she and the Pres[ident] did not have sexual intercourse." App. at 718 (2/1/98 Proffer).

• "Lewinsky said that her use of the term 'having sex' means having intercourse. . . ." App. at 1558 (Lewinsky FBI 302 8/19/98).

The allegation contained in Article II(1) is totally unsupported by evidence. It is the product of a baseless hypothesis, and it should be rejected.

2. The President denies that on or about December 17, 1997, he "corruptly encouraged" Monica Lewinsky "to give perjurious, false and misleading testimony if and when called to testify personally" in the Jones litigation

Article II (2) alleges that the President encouraged Ms. Lewinsky to give false testimony if and when she was called to testify personally in the *Jones* litigation. Again, Ms. Lewinsky repeatedly denied that anyone told her or encouraged her to lie:

• "Neither the Pres[ident] nor Mr. Jordan (or anyone on their behalf) asked or encouraged Ms. L[ewinsky] to lie." App. at 718 (2/1/98 Proffer).

• "[N]o one ever asked me to lie and I was never promised a job for my silence." App. at 1161 (Lewinsky GJ 8/20/98).

• "Neither the President nor Jordan ever told Lewinsky that she had to lie." App. at 1398 (Lewinsky FBI 302 7/27/98).

• "Neither the President nor anyone ever directed Lewinsky to say anything or to lie. . . . App. at 1400 (Lewinsky FBI 302 7/27/98).

• "I think I told [Linda Tripp] that—you know at various times the President and Mr. Jordan had told me I have to lie. *That wasn't true*." App. at 942 (Lewinsky GJ 8/6/98) (emphasis added).

The Managers allege that the President called Ms. Lewinsky on December 17 to inform her that she had been listed as a potential witness in the *Jones* case, and that during this conversation, he "sort of said, 'You know, you can always say you were coming to see Betty or that you were bringing me letters.'" House Br. at 22; App. at 843 (Lewinsky GJ 8/6/98). Other than the fact that Ms. Lewinsky recalls this statement being made in the same conversation in which she learned that her name was on the *Jones* witness list, the Managers cite no evidence whatsoever that

[95] The Committee Report argued that Ms. Lewinsky "contextually understood that the President wanted her to lie" because he never told her to file an affidavit fully detailing the "true nature" of their relationship. Committee Report at 65. The only support cited for this "contextual understanding" obstruction theory advanced by the Committee Report was a reference back to the OIC Referral. The OIC Referral, in turn, advanced the same theory, citing only the testimony of Ms. Lewinsky that, while the President never encouraged her to lie, he remained silent about what she should do or say, and by such silence, "I knew what that meant." App. at 954 (Lewinsky GJ 8/6/98) (cited in Referral at 174). It is extraordinary that the President of the United States could face removal from office *not* because he told Ms. Lewinsky to lie, or said anything of the sort, but instead because he stayed silent—and Ms. Lewinsky thought she "knew what that meant."

[96] A friend of Ms. Lewinsky's also testified that, based on her close relationship with her, she believed that Ms. Lewinsky did not lie in her affidavit based on her understanding that when Ms. Lewinsky referred to "sex" she meant intercourse. Supp. at 4597 (6/23/98 grand jury testimony of Ms. Dale Young). *See also* Supp. at 1066 (grand jury testimony of Ms. Neysa Erbland stating that Ms. Lewinsky had said that the President and she "didn't have sex").

supports their claim that the President encouraged her to make such statements "if and when called to testify personally in the *Jones* case." They claim simply that Ms. Lewinsky had discussed such explanations for her visits with the President in the past. Unremarkably, the President and Ms. Lewinsky had been concerned about concealing their improper relationship from others while it was ongoing.

Ms. Lewinsky's own testimony and proffered statements undercut their case:

• *When asked what should be said if anyone questioned Ms. Lewinsky* about her being with the President, he said she should say she was bringing him letters (when she worked in Legislative Affairs) or visiting Betty Currie (after she left the WH). There is truth to both of these statements. . . . [This] occurred *prior to the subpoena* in the Paula Jones case. App. at 709 and 718 (2/1/98 Proffer) (emphasis added).

• After Ms. Lewinsky was informed, by the Pres[ident], that she was identified as a possible witness in the Jones case, the Pres[ident] and Ms. L[ewinsky] discussed what she should do. The President told her he was not sure she would be subpoenaed, but in the event that she was, she should contact Ms. Currie. When asked what to do if she was subpoenaed, the Pres[ident] suggested she could sign an affidavit to try to satisfy their inquiry and not be deposed. *In general*, Ms. L[ewinsky] should say she visited the WH to see Ms. Currie and, on occasion when working at the WH, she brought him letters when no one else was around. Neither of those statements untrue. App. at 712 (2/1/98 Proffer) (emphasis added).

• To the best of Ms. L[ewinsky]'s memory, she *does not believe they discussed the content of any deposition* that Ms. L[ewinsky] might be involved in at a later date. App. at 712 (2/1/98 Proffer) (emphasis added).

• LEWINSKY advised, though *they did not discuss the issue in specific relation to the JONES matter*, she and CLINTON had discussed what to say when asked about LEWINSKY's visits to the White House. App. at 1466 (Lewinsky FBI 302 7/31/98) (emphasis added).

Ms. Lewinsky's statements indicate that she asked the President what to say if "anyone" asked about her visits, that the President said "in general" she could give such an explanation, and that they "did not discuss the issue in specific relation to the *Jones* matter."

This is consistent with the President's testimony that he and Ms. Lewinsky "might have talked about what to do in a non-legal context at some point in the past," although he had no specific memory of that conversation. App. at 569. The President also stated in his grand jury testimony that he did not recall saying anything like that in connection with Ms. Lewinsky's testimony in the *Jones* case:

Q: And in that conversation, or in any conversation in which you informed her she was on the witness list, did you tell her, you know, you can always say that you were coming to see Betty or bringing me letters? Did you tell her anything like that?

A: I don't remember. She was coming to see Betty. I can tell you this. I absolutely never asked her to lie.

App. at 568. Ms. Lewinsky does not testify that this discussion was had in reference to testimony she may or may not have been called to give personally, and the Managers' implication is directly contradicted by Ms. Lewinsky's statement that she and the President did *not* discuss her deposition testimony in that conversation. *See* App. at 712 (2/1/98 Proffer) ("To the best of Ms. L[ewinsky's] memory, she does not believe they discussed [in the December 17 conversation] the content of any deposition that Ms. L[ewinsky] might be involved in at a later date.").

In support of this allegation, the Managers also cite Ms. Lewinsky's testimony that she told the President she would deny the relationship and that the President made some encouraging comment. House Br. at 23. Ms. Lewinsky never stated that she told the President any such thing on December 17, or at any other time after she had been identified as a witness. Indeed, Ms. Lewinsky testified that that discussion did not take place after she learned she was a witness in the *Jones* case:

Q: It is possible that you also had these discussions [about denying the relationship] after you learned that you were a witness in the Paula Jones case?

A: *I don't believe so. No.*

Q: Can you exclude that possibility?

A: *I pretty much can.* I really don't remember it. I mean, it would be very surprising for me to be confronted with something that would show me different, but I—it was 2:30 in the—I mean, the conversation I'm thinking of mainly would have been December 17th, which was——

Q: The telephone call.

A: Right. And it was—you know, 2:00, 2:30 in the morning. I remember the gist of it and I—I really don't think so.

App. at 1119–20 (Lewinsky GJ 8/20/98) (emphasis added).

Moreover, Ms. Lewinsky has stated several times that neither of these so-called "cover stories" was untrue. In her handwritten proffer, Ms. Lewinsky stated that she asked the President what to say if anyone asked her about her visits to the Oval Office and he said that she could say "she was bringing him letters (when she worked in Legislative Affairs) or visiting Betty Currie (after she left the White House)." App. at 709 (Lewinsky 2/1/98 Proffer). Ms. Lewinsky expressly stated: "*There is truth to both of these statements.*" *Id.* (emphasis added); *see also* App. at 712 (2/1/98 Proffer) ("*[n]either of those statements [was] untrue.*") (emphasis added). Indeed, Ms. Lewinsky testified to the grand jury that she did in fact bring papers to the President and that on some occasions, she visited the Oval Office only to see Ms. Currie:

Q: Did you actually bring [the President] papers at all?
A: Yes.
Q: All right. Tell us a little about that.
A: It varied. Sometimes it was just actual copies of letters. . . .

App. at 774–75 (Lewinsky GJ 8/6/98).

"I saw Betty on every time that I was there . . . most of the time my purpose was to see the President, but there were some times when I did just go see Betty but the President wasn't in the office."

App. at 775 (Lewinsky GJ 8/6/98). The Managers assert that those stories were misleading. House Br. at 23; *see also* Committee Report at 66 (delivering documents to the President was a "ruse that had no legitimate business purpose."). In other words, while the so-called "cover stories" were literally true, such explanations might have been misleading. But literal truth is a critical issue in perjury and obstruction cases, as is Ms. Lewinsky's belief that the statements were, in fact, literally true.

The allegation contained in Article II (2) is unsupported by the evidence and should be rejected.

3. The President denies that he "corruptly engaged in, encouraged, or supported a scheme to conceal evidence"—gifts he had given to Monica Lewinsky—in the Jones case

This allegation charges that the President participated in a scheme to conceal certain gifts he had given to Monica Lewinsky. It apparently centers on two events allegedly occurring in December 1997: (a) a conversation between the President and Ms. Lewinsky in which the two allegedly discussed the gifts the President had given Ms. Lewinsky, and (b) Ms. Currie's receipt of a box of gifts from Ms. Lewinsky and storage of them under her bed. The evidence does not support the charge.

a. Ms. Lewinsky's December 28 Meeting with the President

Monica Lewinsky met with the President on December 28, 1997, sometime shortly after 8:00 a.m. to pick up Christmas presents. App. at 868 (Lewinsky GJ 8/6/98). According to Ms. Lewinsky, she raised the subject of gifts she had received from the President in relation to the *Jones* subpoena, and this was the first and only time that this subject arose. App. at 1130 (Lewinsky GJ 8/20/98); App. at 1338 (Lewinsky Depo. 8/26/98).

The House Trial Brief and the Committee Report quote one version of Ms. Lewinsky's description of that December 28 conversation:

"[A]t some point I said to him, 'Well, you know, should I—maybe I should put the gifts away outside my house somewhere or give them to someone, maybe Betty.' And he sort of said—I think he responded, 'I don't know' or 'Let me think about that.' And left that topic." App. at 872 (Lewinsky GJ 8/6/98).

In fairness, the Senate should be aware that Ms. Lewinsky has addressed this crucial exchange with prosecutors on at least ten different occasions, which we lay out in the margin for review.[97] The accounts varied—in some Ms. Lewinsky essen-

[97] Those statements, from earliest to latest in time:

1. Proffer (2/1/98): "Ms. L then asked if she should put away (outside her home) the gifts he had given her or, maybe, give them so someone else." App. at 715.

2. FBI 302 (7/27/98): "LEWINSKY expressed her concern about the gifts that the President had given LEWINSKY and specifically the hat pin that had been subpoenaed by PAULA JONES. The President seemed to know what the JONES subpoena called for in advance and did not seem surprised about the hat pin. The President asked LEWINSKY if she had told anyone about the hat pin and LEWINSKY denied that she had, but may have said that she gave

Continued

tially recalled that the President gave no response, but the House Managers, like the Committee Report and the OIC Referral, cite only the account most favorable to their case, failing even to take note of the other inconsistent recollections. But the important fact about Ms. Lewinsky's various descriptions of this conversation is that, at the *very* most, the President stated "I don't know" or "Let me think about it" when Ms. Lewinsky raised the issue of the gifts. Even by the account most unfavorable to the President, the record is clear and unambiguous that the President *never initiated* any discussion about the gifts *nor did he tell or even suggest to Ms. Lewinsky that she should conceal the gifts.*

Indeed, on several occasions, Ms. Lewinsky's accounts of the President's reaction depict the President as *not even acknowledging* her suggestion. Among those versions, ignored by the Committee Report and the Managers, are the following:

• "And he—I don't remember his response. I think it was something like, 'I don't know,'" or 'Hmm,' or—*there really was no response*." App. at 1122 (Lewinsky GJ 8/20/98) (emphasis added).

• "[The President] either *did not respond* or responded 'I don't know.' LEWINSKY is not sure exactly what was said, but she is certain that whatever CLINTON said, she *did not have a clear image in her mind of what to do next*." App. at 1566 (Lewinsky FBI 302 8/24/98) (emphasis added).

• "The President wouldn't have brought up Betty's name, because he really didn't—*he really didn't discuss it* . . ." App. at 1122 (Lewinsky GJ 8/20/98) (emphasis added).

• "A JUROR: You had said that the President had called you initially to come get your Christmas gift, you had gone there, you had a talk, et cetera, and there was no—you expressed concern, *the President didn't really say anything*." App. at 1126 (Lewinsky GJ 8/20/98) (emphasis added).[98]

Thus, the evidence establishes that there was essentially no discussion of gifts. That December 28 meeting provides no evidence of any "scheme . . . designed to . . . conceal the existence" of any gifts.

b. Ms. Currie's Supposed Involvement in Concealing Gifts

Because the record is devoid of any evidence of obstruction by the President at his December 28 meeting with Monica Lewinsky, Article II (3) necessarily depends on the added assumption that, after the December 28 meeting, the President must

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some of the gifts to FRANK CARTER. . . . LEWINSKY asked the President if she should give the gifts to someone and the President replied 'I don't know.'" App. at 1395.

3. FBI 302 (8/1/98): "LEWINSKY said that she was concerned about the gifts that the President had given her and suggested to the President that BETTY CURRIE hold the gifts. The President said something like, 'I don't know,' or 'I'll think about it.' The President did not tell LEWINSKY what to do with the gifts at that time." App. at 1481.

4. Grand Jury (8/6/98): "[A]t some point I said to him, 'Well, you know, should I—maybe I should put the gifts away outside my house somewhere or give them to someone, maybe Betty.' And he sort of said—I think he responded, 'I don't know' or 'Let me think about that.' And left that topic." App. at 872.

5. FBI 302 (8/13/97): "During their December 28, 1997 meeting, CLINTON did not specifically mention which gifts to get rid of." App. at 1549.

6. Grand Jury (8/20/98): "It was December 28th and I was there to get my Christmas gifts from him. . . And we spent maybe about five minutes or so, not very long, talking about the case. And I said to him, 'Well, do you think' . . . And at one point, I said, 'Well do you think I should—' I don't think I said 'get rid of,' I said, 'But do you think I should put away or maybe give to Betty or give someone the gifts?' And he—I don't remember his response. I think it was something like, 'I don't know,' or 'Hmm,' or—there really was no response." App. at 1121–22.

7. Grand Jury (8/20/98): "A JUROR: Now, did you bring up Betty's name [at the December 28 meeting during which gifts were supposedly discussed] or did the President bring up Betty's name? THE WITNESS: I think I brought it up. The President wouldn't have brought up Betty's name because he really didn't—he really didn't discuss it. . ." App. at 1122.

8. Grand Jury (8/20/98): "A JUROR: You had said that the President had called you initially to come get your Christmas gift, you had gone there, you had a talk, et cetera, and there was no—you expressed concern, the President really didn't say anything." App. at 1126.

9. FBI 302 (8/24/98): "LEWINSKY advised that CLINTON was sitting in the rocking chair in the Study. LEWINSKY asked CLINTON what she should do with the gifts CLINTON had given her and he either did not respond or responded 'I don't know.' LEWINSKY is not sure exactly what was said, but she is certain that whatever CLINTON said, she did not have a clear image in her mind of what to do next." App. at 1566.

10. FBI 302 (9/3/98): "On December 28, 1997, in a conversation between LEWINSKY and the President, the hat pin given to Lewinsky by the President was specifically discussed. They also discussed the general subject of the gifts the President had given Lewinsky. However, they did not discuss other specific gifts called for by the PAULA JONES subpoena. LEWINSKY got the impression that the President knew what was on the subpoena." App. at 1590.

[98] Here a grand juror is restating Ms. Lewinsky's earlier testimony, with which Ms. Lewinsky appeared to agree (she did not dispute the accuracy of the grand juror's recapitulation).

have instructed his secretary, Ms. Betty Currie, to retrieve the gifts from Ms. Lewinsky, thereby consummating the obstruction of justice. As the following discussion will demonstrate, the record is devoid of any direct evidence that the President discussed this subject with Ms. Currie. At most, it conflicted on the question of whether Ms. Currie or Ms. Lewinsky initiated the gift retrieval.

We begin with what is certain. The record is undisputed that Ms. Currie picked up a box containing gifts from Ms. Lewinsky and placed them under her bed at home. The primary factual dispute, therefore, is which of the two initiated the pick-up. According to the logic of the Committee Report, if Ms. Currie initiated the retrieval, she must have been so instructed by the President. Committee Report at 69 ("there is no reason for her to do so unless instructed by the President").

But the facts are otherwise. *Both* Ms. Currie and the President have denied ever having any such conversation wherein the President instructed Ms. Currie to retrieve the gifts from Ms. Lewinsky. App. at 502 (President Clinton GJ 8/17/98); Supp. at 581 (Currie GJ 5/6/98). In other words, the only two parties who could have direct knowledge of such an instruction by the President have denied it took place.

In the face of this direct evidence that the President did not ask Ms. Currie to pick up these gifts, the Committee Report's obstruction theory hinges on the inference that Ms. Currie called Ms. Lewinsky and must have done so at the direction of the President. To be sure, Ms. Lewinsky has stated on several occasions that Ms. Currie initiated a call to her to inquire about retrieving something. The Managers and the Committee Report cited the following passage from Ms. Lewinsky's grand jury testimony:

Q: What did [Betty Currie] say?

A: She said, "I understand you have something to give me." Or, "The President said you have something to give me." Along those lines. . . .

Q: When she said something along the lines of "I understand you have something to give me," or "The President says you have something for me," what did you understand her to mean?

A: The gifts.

App. at 874 (Lewinsky GJ 8/6/98). *See also* App. at 715 (2/1/98 Proffer) ("Ms. Currie called Ms. L later that afternoon and said that the Pres. had told her Ms. L wanted her to hold onto something for her.").

However, Ms. Lewinsky acknowledged that it was she who first raised the prospect of Ms. Currie's involvement in holding the gifts:

A JUROR: Now, did you bring up Betty's name or did the President bring up Betty's name?

[MS. LEWINSKY]: I think I brought it up. The President wouldn't have brought up Betty's name because he really didn't—he really didn't discuss it.

App. at 1122 (Lewinsky GJ 8/20/98). And contrary to the Committee Report's suggestion that Lewinsky's memory of these events has been "consistent and unequivocal" and she has "recited the same facts in February, July, and August," Committee Report at 69, Ms. Lewinsky herself acknowledged at her last grand jury appearance that her memory of the crucial conversation is less than crystal clear:

A JUROR: . . . Do you remember Betty Currie saying that the President had told her to call?

[MS. LEWINSKY]: Right now. I don't. I don't remember. . . .

App. at 1141 (Lewinsky GJ 8/20/98).

Moreover, Ms. Currie has repeatedly and unvaryingly stated that it was Ms. Lewinsky who contacted Ms. Currie about the gifts, not the other way around. A few examples include:

- "LEWINSKY called CURRIE and advised she had to return all gifts CLINTON had given LEWINSKY as there was talk going around about the gifts." Supp. at 531 (Currie FBI 302 1/24/98);
- "Monica said she was getting concerned, and she wanted to give me the stuff the President had given her—or give me a box of stuff. It was a box of stuff." Supp. at 557 (Currie GJ 1/27/98);
- Q: . . . Just tell us for a moment how this issue first arose and what you did about it and what Ms. Lewinsky told you.
- A: The best I remember it first arose with a conversation. I don't know if it was over the telephone or in person. I don't know. She asked me if I would pick up a box. She said Isikoff had been inquiring about gifts." Supp. at 582 (Currie GJ 5/6/98);
- "The best I remember she said that she wanted me to hold these gifts—hold this—she may have said gifts, I'm sure she said gifts, box of gifts—I don't remem-

ber—because people were asking questions. And I said, 'Fine.'" Supp. at 581 (Currie GJ 5/6/98);

• "The best I remember is Monica calls me and asks me if she can give me some gifts, if I'd pick up some gifts for her." Supp. at 706 (Currie GJ 7/22/98).

The Committee Report attempts to portray Ms. Currie's memory as faulty on the key issue of whether Ms. Lewinsky initiated the gift retrieval by unfairly referencing Ms. Currie's answer *to a completely different question*. Ms. Currie was asked whether she had discussed with the President Ms. Lewinsky's "turning over to [her]" the gift he had given her. Ms. Currie indicated that she could remember no such occasion. "If Monica said [Ms. Currie] talked to the President about it," she was then asked, "would that not be true?" Then, only on the limited question of whether Ms. Currie ever talked to the President about the gifts—wholly separate from the issue of who made the initial contact—did Ms. Currie courteously defer, "Then she may remember better than I. I don't remember." Supp. at 584 (Currie GJ 5/6/98). Ironically, it is the substance of this very allegation—regarding conversations between Ms. Currie and the President—that Ms. Lewinsky told the grand jury *she* could not recall. (In later testimony, referring to a conversation she had with the President on January 21, Ms. Currie testified that she was "sure" that she did not discuss the fact that she had a box of Ms. Lewinsky's belongings under her bed. Supp. at 705 (Currie GJ 7/22/98).)

To support its theory that Ms. Currie initiated a call to Ms. Lewinsky, the House Managers place great reliance on a cell phone record of Ms. Currie, calling it "key evidence that Ms. Currie's fuzzy recollection is wrong" and which "conclusively proves" that "the President directed Ms. Currie to pick up the gifts." House Br. at 33. There is record of a one-minute call on December 28, 1998 from Ms. Currie's cell phone to Ms. Lewinsky's home at 3:32 p.m. Even assuming Ms. Lewinsky is correct that Ms. Currie picked up the gifts on December 28, her own testimony refutes the possibility that the Managers' mysterious 3:32 p.m. telephone call could have been the initial contact by Ms. Currie to retrieve the gifts. To the contrary, the timing and duration of the call strongly suggest just the opposite. It is undisputed that Ms. Lewinsky entered the White House on the morning of December 28 at 8:16 a.m. App. at 111 (White House entry records). While no exit time for Ms. Lewinsky was recorded because she inadvertently left her visitor badge in the White House, she has testified that the visit lasted around an hour. App. at 870–72 (Lewinsky GJ 8/6/98). Consistent with this timing, records also indicate that the President left the Oval Office at 9:52 a.m., thus placing Ms. Lewinsky's exit around 9:30 to 9:45 a.m. App. at 111. Ms. Lewinsky has indicated on several occasions that her discussion with Betty Currie occurred just "several hours" after she left. App. at 875 (Lewinsky GJ 8/6/98); App. at 1395 (Lewinsky FBI 302 7/27/98). Ms. Lewinsky three times placed the timing of the actual gift exchange with Ms. Currie "at about 2:00 p.m." App at 1127 (Lewinsky GJ 8/20/98); App. at 1396 (Lewinsky FBI 302 7/27/98); App. at 1482 (Lewinsky FBI 302 8/1/98). This, in light of undisputed documentary evidence and Ms. Lewinsky's own testimony, it becomes clear that the 3:32 p.m. telephone record relied upon by the Committee Report in fact is unlikely to reflect a call placed to initiate the pick-up.

Apart from this conspicuous timing defect, there is another, independent reason to conclude that the 3:32 p.m. telephone call could not have been the conversation Ms. Lewinsky describes. The 3:32 p.m. call is documented to have lasted *no longer* than one minute, and because such calls are rounded up to the nearest minute, it quite conceivably could have been much shorter in duration. It is difficult to imagine that the conversation reflected in Ms. Lewinsky's statements could have taken place in less than one minute. Both Ms. Currie and Ms. Lewinsky have described the various matters that were discussed in their initial conversation: not only was this the first time the topic of returning gifts was discussed, which quite likely generated some discussion between the two, but they also had to discuss and arrange a convenient plan for Ms. Currie to make the pick-up.[99]

What, then, to make of this call so heavily relied upon by the House Managers? The record is replete with references that Ms. Currie and Ms. Lewinsky communicated very frequently, especially during this December 1997–January 1998 time period. *See, e.g.,* Supp. at 554 (Currie GJ 1/27/98) (many calls around Christmastime). They often called or paged each other to discuss a host of topics, including

[99] The OIC Referral, which took great pains to point out every allegedly incriminating piece of evidence, made no reference to this telephone record, perhaps because the OIC knew it tended *not* to corroborate Ms. Lewinsky's time line. In its place, the Referral rested its corroboration hopes in the following bizarre analysis: "More generally, the person making the extra effort (in this case, Ms. Currie) is ordinarily the person requesting the favor." Referral at 170. Wisely, the House Managers chose not to pursue this groundless speculation.

Ms. Lewinsky's pending job search, Ms. Currie's mother's illness, and her contacts with Mr. Jordan. There is simply no reason to believe this call was anything other than one of the many calls and exchanges of pages that these two shared during the period.

c. The Obstruction-by-Gift-Concealment Charge Is at Odds With the President's Actions

Ultimately, and irrespective of the absence of evidence implicating the President in Ms. Lewinsky's gift concealment, the charge fails because it is inconsistent with other events of the very same day. There is absolutely no dispute that the President gave Ms. Lewinsky numerous additional gifts during their December 28 meeting. It must therefore be assumed that on the very day the President and Ms. Lewinsky were conspiring to hide the gifts he had already given to her, the President added to the pile. No stretch of logic will support such an outlandish theory.

From the beginning, this inherent contradiction has puzzled investigators. If there were a plot to conceal these gifts, why did the President give Ms. Lewinsky several *more* gifts at the very moment the concealment plan was allegedly hatched? The House Managers OIC prosecutors, grand jurors, and even Ms. Lewinsky hopelessly searched for an answer to that essential question:

Q: Although, Ms. Lewinsky, I think what is sort of—it seems *a little odd* and, I guess really the grand jurors wanted your impression of it, was *on the same day that you're discussing basically getting the gifts to Betty to conceal them, he's giving you a new set of gifts.*

A: You know, I have come recently to look at that as *sort of a strange situation,* I think, in the course of the past few weeks. . . .

App. at 887–88 (Lewinsky GJ 8/6/98) (emphasis added). See House Br. at 34.

The Committee Report fails to resolve this significant flaw in its theory.[100] The report admits that Ms. Lewinsky "can't answer" why the President would in one breath give her gifts and in the next hatch a plan to take them back. But it cites only to Ms. Lewinsky's understanding of the relationship's pattern of concealment and how she contemplated it must apply to the gifts. It creates the erroneous impression that the President gave Ms. Lewinsky instructions to conceal the gifts in the December 28 meeting by quoting her testimony that "from everything he said to me" she would conceal the gifts. But we know that Ms. Lewinsky has repeatedly testified that no such discussion *ever* occurred. Her reliance on "everything he said to me" must, therefore, reflect her own plan to implement discussions the two had had about concealing the relationship long before her role in the *Jones* litigation.

What this passage confirms is that Ms. Lewinsky had very much in her mind that she would do what she could to conceal the relationship—a *modus operandi* she herself acknowledged well pre-dated the *Jones* litigation. That she took such steps does not mean that the President knew of or participated in them. Indeed, it appears that the entire gift-concealment plan arose not from any plan suggested by the President—which the Committee Report so desperately struggles to maintain—but rather more innocently from the actions of a young woman taking steps she thought were best.[101]

In any event, the record evidence is abundantly clear that the President has not obstructed justice by any plan or scheme to conceal gifts he had given to Ms. Lewinsky, and logic and reason fully undercut any such theory.

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[100] Incredibly, not only does the Committee Report fail to offer a sensible answer to this perplexity, but without any factual or logical support it accuses the President of lying to the grand jury when he testified that he was not particularly concerned about the gifts he had given Ms. Lewinsky and thus had no compunction about giving her additional gifts on December 28. Article I (4). For whatever reason, neither the Committee Report nor the OIC Referral acknowledges the most reasonable explanation for these events: as the President has testified repeatedly, he was not concerned about the gifts he had given Ms. Lewinsky.

- "I was never hung up about this gift issue. Maybe it's because I have a different experience. But, you know, the President gets hundreds of gifts a year, maybe more. I have always given a lot of gifts to people, especially if they give me gifts. And this was no big deal to me." App. at 495.
- "this gift business . . . didn't bother me." App. at 496.
- "I wasn't troubled by this gift issue." App. at 497.
- "I have always given a lot of people gifts. I have always been given gifts. I do not think there is anything improper about a man giving a woman a gift, or a woman giving a man a gift, that necessarily connotes an improper relationship. So, it didn't bother me." App. at 498.

[101] As the President has stated about this potentiality, "I didn't then, I don't now see this [the gifts] as a problem. And if she thought it was a problem, I think it—it must have been from a, really *a misapprehension of the circumstances.* I certainly never encouraged her not to, to comply lawfully with a subpoena." App. at 497–98 (emphasis added.)

4. The President denies that he obstructed justice in connection with Monica Lewinsky's efforts to obtain a job in New York in an effort to "corruptly prevent" her "truthful testimony" in the Jones case

Again, in the absence of specifics in Article II itself, we look to the Committee Report for guidance on the actual charges. The Committee Report would like to portray this claim in as sinister a light as possible, and it alleges that the President of the United States employed his close friend Vernon Jordan to get Monica Lewinsky a job in New York to influence her testimony or perhaps get her away from the *Jones* lawyers. To reach this conclusion, and without the benefit of a single piece of direct evidence to support the charge, it ignores the direct testimony of several witnesses, assigns diabolical purposes to a series of innocuous events, and then claims that "[i]t is logical to infer from this chain of events" that the job efforts "were motivated to influence the testimony of" Ms. Lewinsky. Committee Report at 71. Again, the evidence contradicts the inferences the Committee Report strives to draw. Ms. Lewinsky's New York job search began on her own initiative long before her involvement in the *Jones* case. By her own forceful testimony, her job search had no connection to the *Jones* case.

Mr. Jordan agreed to help Ms. Lewinsky not at the direction of the President but upon the request of Betty Currie, Mr. Jordan's long-time friend. And bizarrely, the idea to involve Mr. Jordan (which arose well before Ms. Lewinsky became a possible *Jones* witness) came not from the President but apparently emanated from Ms. Tripp. In short, the facts directly frustrate the House Majority's theory.[102]

a. The Complete Absence of Direct Evidence Supporting This Charge

It is hard to overstate the importance of the fact that—*by the House Managers', the Committee Report's and the OIC's own admission*—there is not one single piece of direct evidence to support this charge. *Not one.* Indeed, just the contrary is true. Both Ms. Lewinsky and Mr. Jordan have repeatedly testified that there was never an *explicit or implicit* agreement, suggestion, or implication that Ms. Lewinsky would be rewarded with a job for her silence or false testimony. One need look no further than their own testimony:

Lewinsky: "[N]o one ever asked me to lie and I was never promised a job for my silence." App. at 1161 (Lewinsky GJ 8/20/98);

"There was no agreement with the President, JORDAN, or anyone else that LEWINSKY had to sign the Jones affidavit before getting a job in New York. LEWINSKY never demanded a job from Jordan in exchange for a favorable affidavit. Nether the President nor JORDAN ever told LEWINSKY that she had to lie." App. at 1398 (Lewinsky FBI 302 7/27/98).

Jordan: "As far as I was concerned, [the job and the affidavit] were two very separate matters." Supp. at 1737 (Jordan GJ 3/5/98).

"Unequivocally, indubitably, no"—in response to the question whether the job search and the affidavit were in any way connected. Supp. at 1827 (Jordan GJ 5/5/98).[103]

This is the direct evidence. The House Managers' circumstantial "chain of events" case, House Br. 39–41, cannot overcome the hurdle the direct evidence presents.

b. Background of Ms. Lewinsky's New York Job Search

By its terms, Article II(4) would have the Senate evaluate Ms. Lewinsky's job search by considering only the circumstances "[b]eginning on or about December 7, 1997." Article II(4). Although barely mentioned in the Committee Report's "expla-

[102] This allegation has gone through several iterations. As initially referred to the House of Representatives, the charge was that the President "help[ed] Ms. Lewinsky obtain a job in New York at a time when she would have been a witness against him" in the *Jones* case. OIC Referral at 181. Faced with the significant evidence that Ms. Lewinsky's job efforts had originated long before she became involved in the *Jones* case and were in fact entirely unrelated to the *Jones* case, the Judiciary Committee Majority was forced to recraft this claim. Instead of implying a complete connection between the job search and the *Jones* ligitation, the article now oddly charges that the President *intensified and succeeded* in an effort to secure job assistance" for Ms. Lewinsky "at a time when the truthful testimony of [Ms. Lewinsky] would have been harmful to him," Article II (5) (emphasis added)—thereby *admitting* that the initial effort was motivated by appropriate concerns.

[103] The only person who suggested any such *quid pro quo* was Ms. Tripp, who repeatedly urged Ms. Lewinsky to demand such linkage. App. at 1493 (Lewinsky FBI 302 8/2/98 ("TRIPP told LEWINSKY not to sign the affidavit until LEWINSKY had a job."). To appease Linda Tripp's repeated demands on this point, Ms. Lewinsky ultimately told Ms. Tripp that she had told Mr. Jordan she wouldn't sign the affidavit until she had a job. But as she later emphasized to the grand jury, "That was definitely a lie, based on something Linda had made me promise her on January 9th." App. at 1134 (Lewinsky GJ 8/20/98).

nation" of Article II(4), the significant events occurring *before* December 7, 1997 cannot simply be ignored because they are inconsistent with the Majority's theory. Without reciting every detail, the undisputed record establishes that the following facts occurred long before Ms. Lewinsky was involved in the *Jones* case:

First, Ms. Lewinsky had contemplated looking for a job in New York as early as July 1997. App. at 1414 (Lewinsky FBI 302 7/29/98) (July 3 letter "first time [Lewinsky] mentioned the possibility of moving to New York"); App. at 787–788 (On July 4, 1997, Ms. Lewinsky wrote the President a letter describing her interest in a job "in New York at the United Nations"); Committee Report at 10 ("Ms. Lewinsky had been searching for a highly paid job in New York since the previous July.") She conveyed that prospect to a friend on September 2, 1997. App. at 2811 (Lewinsky e-mail).

Second, in early October, at the request of Ms. Currie, then-Deputy Chief of Staff John Podesta asked U.N. Ambassador Bill Richardson to consider Ms. Lewinsky for a position at the U.N. Supp. at 3404 (Richardson GJ 4/3/98). Ms. Currie testified that she was acting on her own in this effort. Supp. at 592 (Currie GJ 5/6/98).

Third, around October 6, Ms. Tripp told Ms. Lewinsky that an acquaintance in the White House reported that it was unlikely Ms. Lewinsky would ever be re-employed at the White House. After this disclosure, Ms. Lewinsky "was mostly resolved to look for a job in the private sector in New York." App. at 1543–44 (Lewinsky FBI 302) 8/13/98; *see also* App. at 1460 (Lewinsky FBI 302 7/31/98) (remarks by the Linda Tripp acquaintance were the "straw that broke the camel's back").

Fourth, sometime prior to October 9, 1997, Ms. Tripp and Ms. Lewinsky discussed the prospect of enlisting Mr. Vernon Jordan to assist Ms. Lewinsky in obtaining a private sector job in New York. App. at 822–24 (Lewinsky GJ 8/6/98); *see also* App. at 1079 (Lewinsky GJ 8/20/98) ("I don't remember . . . if [enlisting Jordan] was my idea or Linda's idea. And I know that that came up in discussions with her, I believe, before I discussed it with the President"). On either October 9 or 11, Ms. Lewinsky conveyed to the President this idea of asking Mr. Jordan for assistance. *Id.*

Fifth, in mid-October, 1997, Ms. Lewinsky purchased a book on jobs in New York. App. at 1462 (Lewinsky FBI 302 7/31/98). Ms. Lewinsky completed and sent to Betty Currie at the White House a packet of jobs-related materials on October 15 or 16. Supp. at 735 (Lewinsky Tripp tape of 10/15/97 conversation).

Sixth, on October 31, 1997, Ms. Lewinsky interviewed for a position with Ambassador Bill Richardson at the United Nations in New York. Ambassador Richardson was "impressed" with Ms. Lewinsky and, on November 3, offered her a position, which she ultimately rejected. Supp. at 3411 (Richardson GJ 4/30/98); Supp. at 3731 (Sutphen GJ 5/27/98). Ms. Currie informed the President that Ms. Lewinsky had received a job offer at the U.N. Supp. at 592 (Currie GJ 5/6/98). Ambassador Richardson never spoke to the President or Mr. Jordan about Ms. Lewinsky, and he testified emphatically and repeatedly that no one pressured him to hire her. Supp. at 3422–23 (Richardson GJ 4/30/98); Supp. at 3418 (same); Supp. at 3429 (same).

Seventh, as of late October or November, Ms. Lewinsky had told Mr. Kenneth Bacon, her boss at the Pentagon, that she wanted to leave the Pentagon and move to New York. In a series of conversations, she enlisted his assistance in obtaining a private sector job in New York. Supp. at 11 (Kenneth Bacon FBI 302 2/26/98). In response, Mr. Bacon contacted Howard Paster, CEO of the public relations firm Hill & Knowlton about Ms. Lewinsky. *Id.*

Eighth, in November, Ms. Lewinsky gave notice to the Pentagon that she would be leaving her Pentagon job at year's end. Supp. at 116 (Clifford Bernath GJ 5/21/98).

Ninth, Ms. Lewinsky apparently had a preliminary meeting with Mr. Jordan on November 5, 1997 to discuss her job search. During this twenty-minute meeting, Ms. Lewinsky and Mr. Jordan discussed a list of potential employers she had compiled. App. at 1464–65 (Lewinsky FBI 302 7/31/98). In that meeting, Ms. Lewinsky never informed Mr. Jordan of any time constraints on her need for job assistance. Supp. at 2647 (Lewinsky-Tripp Tape of 11/8/97 conversation). Mr. Jordan had to leave town the next day. App. at 1465 (Lewinsky FBI 302 Form 7/31/98). Ms. Lewinsky had a follow-up telephone conversation with Mr. Jordan around Thanksgiving wherein he advised her that he was "working on her job search" and instructed her to call him again "around the first week of December." App. at 1465 (Lewinsky FBI 302 7/31/98); *see also* App. at 825 (Lewinsky GJ 8/6/98) ("And so Betty arranged for me to speak with [Jordan] again and I spoke with him when I

was in Los Angeles before—right before Thanksgiving.")[104] Inexplicably, the Committee Report, the presentation by its chief counsel, and the Starr Referral all choose to ignore this key piece of testimony—that contact resumed in early December because Ms. Lewinsky and Mr. Jordan agreed (in November) that it would. *See* Committee Report at 10 ("Ms. Lewinsky had no further contacts with Mr. Jordan at that time [early November to mid December]."); Schippers Dec. 10, 1998 Presentation at 38 ("Vernon Jordan, who, by the way, had done nothing from early November to mid-December."); Referral at 182 ("Ms. Lewinsky had no contact with . . . Mr. Jordan for another month [after November 5].").

In sum, the record is clear that Ms. Lewinsky decided on her own to seek a job in New York many months before her involvement in the *Jones* case. She had asked her Pentagon boss to help, as well as Ms. Currie, who arranged indirectly for Ms. Lewinsky to interview with Ambassador Richardson at the United Nations. Mr. Jordan became involved in the job search at the request of Ms. Currie (apparently at the suggestion of Ms. Tripp) and, notwithstanding his travels in November, Supp. at 1811 (Jordan GJ 5/5/98), kept in contact with Ms. Lewinsky with plans to reconvene early in December.

c. The Committee Report's Circumstantial Case

Article II ignores this background and merely alleges that efforts to aid Ms. Lewinsky's job search "intensified and succeeded" in December 1997. While not adopted in the article, the House Brief, the Committee Report, and the accompanying final presentation by Majority Counsel Schippers offer some guidance as to the meaning of the actual charge. They cite three events—Mr. Jordan's December 11 meeting with Ms. Lewinsky to discuss job prospects in New York, Ms. Lewinsky's execution of her *Jones* affidavit, and her receipt of a job—in an effort to portray Ms. Lewinsky's job search as sinister. But the full record easily dispels any suggestion that there were any obstructive or improper acts.

(1) Monica Lewinsky's December 11 meeting with Vernon Jordan

The House Managers and the Committee Report suggest that Mr. Jordan took action on Ms. Lewinsky's job search request only after, and because, Ms. Lewinsky's name appeared on the witness list on December 5 and only after, and because, Judge Wright ordered the President to answer certain questions about "other women" on December 11. *See* House Br. at 21. Consider the Committee Report portrayal:

"[T]he effort to obtain a job for Monica Lewinsky in New York intensified after the President learned, on December 6, 1997, that Monica Lewinsky was listed on the witness list for the case Jones v. Clinton.[105]

"On December 7, 1997, President Clinton met with Vernon Jordan at the White House. Ms. Lewinsky met with Mr. Jordan on December 11 to discuss specific job contacts in New York. Mr. Jordan then made calls to certain New York companies on Ms. Lewinsky's behalf. Jordan telephoned President Clinton to keep him informed of the efforts to get Ms. Lewinsky a job." Committee Report at 70.

"Something happened that changed the priority assigned to the job search. On the morning of December 11, 1997, Judge Susan Webber Wright ordered President Clinton to provide information regarding any state or federal employee with whom he had, proposed, or sought sexual relations. To keep Ms. Lewinsky satisfied was now of critical importance." Committee Report at 11.

The unmistakable intention of this narrative is to suggest that, after the President learned Ms. Lewinsky's name was on the witness list on December 6, he (1) contacted Mr. Jordan on December 7 to engage his assistance for Ms. Lewinsky, and only then did Mr. Jordan agree to meet with Ms. Lewinsky, and further, that (2) Mr. Jordan met with Ms. Lewinsky on December 11 and took concrete steps to help Ms. Lewinsky only after and as a result of Judge Wright's December 11 order. Both suggestions are demonstrably false.

The President had nothing to do with arranging the December 11 meeting between Mr. Jordan and Ms. Lewinsky. As the record indicates, after receiving a request from Ms. Currie on December 5 that he meet with Ms. Lewinsky, and telling Ms. Currie to have Ms. Lewinsky call him, Ms. Lewinsky called Mr. Jordan on December 8. Supp. at 1705 (Jordan GJ 3/3/98). As noted above, that call had been

[104] Mr. Jordan was then out of the country from the day after Thanksgiving until December 4. Supp. at 1804 (Jordan GJ 5/5/98).

[105] Committee Report at 70. That portrayal flatly contradicts the Committee Report's earlier statement that on December 6 "there was still no urgency to help Lewinsky." Committee Report at 10–11.

presaged by a conversation between Mr. Jordan and Ms. Lewinsky around Thanksgiving in which Jordan told her "he was working on her job search" and asked her to contact him again "around the first week of December." App. at 1465 (Lewinsky FBI 302 7/31/98). In the December 8 call, the two arranged for Ms. Lewinsky to come to Mr. Jordan's office on December 11; on the same day, Ms. Lewinsky sent Mr. Jordan via courier a copy of her resume. Supp. at 1705 (Jordan GJ 3/3/98). At the time of that contact, Mr. Jordan did not even know that Ms. Lewinsky knew President Clinton. *Id.*

In the intervening period before Ms. Lewinsky's December 11 meeting with Mr. Jordan, the President met with Mr. Jordan on December 7. As the Committee Report acknowledges, that meeting had nothing to do with Ms. Lewinsky. Committee Report at 11. Yet the House Managers' Brief, like the Committee Report before it, states that "the sudden interest [in helping Ms. Lewinsky obtain a job] was inspired by a court order entered on December 11, 1997" in the *Jones* case.[106] House Br. at 21. No evidence supports that supposition. The December 11 meeting had been scheduled on December 8. Neither the OIC Referral nor the Committee Report nor the Managers' Brief cites *any* evidence that the President or Mr. Jordan had any knowledge of the contents of that Order at the time of the December 11 meeting.

Mr. Jordan met with Ms. Lewinsky shortly after 1:00 p.m. on December 11. Supp. at 1863 (Akin Gump visitor log); Supp. at 1809 (Jordan GJ 5/5/98). In anticipation of that meeting, Mr. Jordan had made several calls to prospective employers about Ms. Lewinsky. Supp. at 1807–09 (Jordan GJ 5/5/98). Mr. Jordan spoke about Ms. Lewinsky with Mr. Peter Georgescu of Young & Rubicam at 9:45 a.m. that morning, and with Mr. Richard Halperin of Revlon around 1:00 p.m., immediately before meeting with Ms. Lewinsky. Supp. at 1807–09 (Jordan GJ 5/5/98). Again, there is no evidence that any of this occurred after Mr. Jordan learned of Judge Wright's order.

Although the Committee Report claims that a heightened sense of urgency attached in December which "intensified" the job search efforts, it ignores the sworn testimony of Mr. Jordan denying any such intensification: "Oh, no. I do not recall any heightened sense of urgency [in December]. What I do recall is that I dealt with it when I had time to do it." Supp. at 1811 (Jordan GJ 5/5/98).[107]

The "heightened urgency" theory also is undermined by the simple fact that Mr. Jordan indisputably placed *no* pressure on any company to give Ms. Lewinsky a job and suggested no date by which Ms. Lewinsky had to be hired. The first person Mr. Jordan contacted, Mr. Georgescu of Young & Rubicam/Burson-Marsteller, told investigators that Mr. Jordan did not engage in a "sales pitch" for Lewinsky. Supp. at 1222 (Georgescu FBI 302 3/25/98). Mr. Georgescu told Mr. Jordan that the company "would take a look at [Ms. Lewinsky] in the usual way," Supp. at 1219 (Georgescu FBI 302 1/29/98), and that once the initial interview was set up, Ms. Lewinsky would be "on [her] own from that point." Supp. at 1222 (Georgescu FBI 302 3/25/98). The executive who interviewed Ms. Lewinsky at Burson-Marsteller stated that Ms. Lewinsky's recruitment process went "by the book" and, "while somewhat accelerated," the process "went through the normal steps." Supp. at 111 (Berk FBI 302 3/31/98).

At American Express, Mr. Jordan contacted Ms. Ursula Fairbairn, who stated that Mr. Jordan exerted "no . . . pressure" to hire Lewinsky. Supp. at 1087 (Fairbairn FBI 302 2/4/98). Indeed, she considered it "not unusual for board members" like Mr. Jordan to recommend talented people for employment and noted that Mr. Jordan had recently recommended another person just a few months earlier. *Id.* The person who interviewed Ms. Lewinsky stated that he felt "absolutely no pressure" to hire her and indeed told her she did not have the qualifications necessary for the position. Supp. at 3521 (Schick FBI 302 1/29/98).

Perhaps most telling of the absence of pressure applied by Mr. Jordan is the fact that neither Young & Rubicam/Burson-Marsteller or American Express offered Ms. Lewinsky a job.

Similarly, at MacAndrews & Forbes/Revlon, where Ms. Lewinsky ultimately was offered a job (see below), Mr. Jordan initially contacted Mr. Halperin, who has stated that it was not unusual for Mr. Jordan to make an employment recommendation. Supp. at 1281 (Halperin FBI 302 1/26/98). Moreover, he emphasized that Mr. Jordan did not "ask [him] to work on any particular timetable," Supp. at 1294 (Halperin

[106] That Order authorized Paula Jones' attorneys to obtain discovery relating to certain government employees "with whom the President had sexual relations, proposed sexual relations, or sought to have sexual relations." House Br. at 21.

[107] Mr. Jordan explained that not much activity occurred in November because "I was traveling." Supp. at 1811 (Jordan GJ 9/5/98).

GJ 4/23/98), and that "there was no implied time constraint or requirement for fast action." Supp. at 1286 (Halperin FBI 3/27/98.)

(2) The January job interviews and the Revlon employment offer

The Committee Report attempts to conflate separate and unrelated acts—the signing of the affidavit and the Revlon job offer—to sustain its otherwise unsustainable obstruction theory. The Committee Report's description of these events is deftly misleading:

"The next day, January 7, Monica Lewinsky signed the false affidavit. She showed the executed copy to Mr. Jordan that same day. She did this so that Mr. Jordan could report to President Clinton that it had been signed and another mission had been accomplished.

On January 8, Ms. Lewinsky had an interview arranged by Mr. Jordan with MacAndrews & Forbes in New York. The interview went poorly. Afterwards, Ms. Lewinsky called Mr. Jordan and informed him. Mr. Jordan, who had done nothing from early November to mid-December, then called the chief executive officer of MacAndrews & Forbes, Ron Perelman, to "make things happen, if they could happen." Mr. Jordan called Ms. Lewinsky back and told her not to worry. That evening, MacAndrews & Forbes called Ms. Lewinsky and told her that she would be given more interviews the next morning.

The next morning, Ms. Lewinsky received her reward for signing the false affidavit. After a series of interviews with MacAndrews & Forbes personnel, she was informally offered a job. Committee Report at 18 (citations omitted).

By this portrayal, the Committee Report suggests two conclusions: first, that Ms. Lewinsky was "reward[ed]" with a job for her signing of the affidavit; second, that the only reason Ms. Lewinsky was given a second interview and ultimately hired at Revlon was Mr. Jordan's intervention with Mr. Perelman. Once again, both conclusions are demonstrably false.

Mr. Jordan and Ms. Lewinsky have testified under oath that there was no causal connection between the job search and the affidavit. The only person to draw (or, actually, recommend) any such linkage was Ms. Tripp. The factual record easily debunks the second insinuation—that Ms. Lewinsky was hired as a direct result of Mr. Jordan's call to Mr. Perelman. One fact is virtually dispositive: the Revlon executive who scheduled Ms. Lewinsky's January 9 interview and decided to hire her that same day never even knew about Mr. Jordan's call to Mr. Perelman, or any interest Mr. Perelman might have in Ms. Lewinsky, and thus could not have been acting in furtherance of such a plan.

Ms. Lewinsky initially interviewed with Mr. Halperin of MacAndrews & Forbes (Revlon's parent company) on December 18, 1997. (Mr. Jordan had spoken with Mr. Halperin on December 11.) Prior to interviewing Ms. Lewinsky, Mr. Halperin forwarded a copy of her resume to Mr. Jaymie Durnan, also of MacAndrews & Forbes, for his consideration. Supp. at 1286–87 (Halperin FBI 302 3/27/98). Following his interview of Ms. Lewinsky, Mr. Halperin thought that she would likely be "shipped to Revlon" for consideration. *Id.*

Mr. Durnan received Ms. Lewinsky's resume from Mr. Halperin in mid-December and, after reviewing it, decided to interview Ms. Lewinsky after the first of the year. (He was going on vocation the last two weeks of December). Supp. at 1053 (Durnan FBI 302 3/27/98). When he returned from vacation, his assistant scheduled an interview with Ms. Lewinsky for January 7, 1998, but, because of scheduling problems, he rescheduled the interview for the next day, January 8, 1998. Supp. at 1049 (Durnan FBI 302 1/26/98). Mr. Durnan's decision to interview Ms. Lewinsky was made independently of the decision by Mr. Halperin to interview her. Indeed, only when Mr. Durnan interviewed Ms. Lewinsky in January did he discover that she had had a December interview with Mr. Halperin. *Id.*

It was this interview with Mr. Durnan that Ms. Lewinsky later described as having gone poorly in her view. App. at 926 (Lewinsky GJ 8/6/98). The House Managers ("[t]he interview went poorly," House Br. at 38), the Committee Report ("The interview went poorly", *id.* at 21), and the OIC Referral ("The interview went poorly," *id.* at 184) all emphasize only *Ms. Lewinsky's* impression of the job interview—for obvious reasons: it tends to heighten the supposed relevance of the Jordan call to Mr. Perelman. In other words, under this theory, Ms. Lewinsky had no prospect of a job at MacAndrews & Forbes/Revlon until Mr. Jordan resurrected her chances with Mr. Perelman.

Unfortunately, like so much other "evidence" in the obstruction case, the facts do not bear out this sinister theory. *Mr. Durnan had no similar impression that his interview with Ms. Lewinsky had gone "poorly."* In fact, just the opposite was true: he was "impressed" with Ms. Lewinsky and thought that she would "fit in" with

MacAndrews & Forbes but "there was nothing available at that time which suited her interests." Supp. at 1054 (Durnan FBI 302 3/27/98). Mr. Durnan therefore decided to forward Ms. Lewinsky's resume to Ms. Allyn Seidman of Revlon. After the interview, he called Ms. Seidman and left her a voicemail message about his interview with Ms. Lewinsky and explained that, while there was no current opening at MacAndrews & Forbes, "perhaps there was something available at Revlon." *Id.*

In the meantime, Mr. Jordan had called Mr. Perelman about Ms. Lewinsky. Mr. Perelman described this conversation as "very low key and casual." Supp. at 3273 (Perelman FBI 302 1/26/98). Mr. Jordan "made no specific requests and did not request" him "to intervene"; nonetheless, Mr. Perelman agreed to "look into it." *Id.* Later that day, Mr. Durnan spoke to Mr. Perelman, who mentioned that he had received a call from Mr. Jordan about a job candidate. Mr. Perelman told Mr. Durnan "let's see what we can do," Supp. at 3276 (Perelman FBI 302 3/27/98), but Mr. Durnan never concluded that hiring Ms. Lewinsky was "mandatory." Supp. at 1055 (Durnan FBI 302 3/27/98). Mr. Perelman later called Mr. Jordan and said they would do what they could; Mr. Jordan expressed no urgency to Mr. Perelman. Supp. at 3276 (Perelman FBI 302 3/27/98).

By the time Mr. Durnan had discussed Ms. Lewinsky with Mr. Perelman, he had *already* forwarded her resume to Ms. Seidman at Revlon. Supp. at 1049–50 (Durnan FBI 302 1/26/98). After speaking with Mr. Perelman, Mr. Durnan spoke with Ms. Seidman, following up on the voicemail message he had left earlier that day. Supp. at 1055 (Durnan FBI 302 3/27/98). Upon speaking to Ms. Seidman about Ms. Lewinsky, however, *Mr. Durnan did not tell Ms. Seidman that CEO Perelman has expressed any interest in Ms. Lewinsky. Id.* Rather, he simply said that if she liked Ms. Lewinsky, she should hire her. Supp. at 1050 (Durnan FBI 302 1/26/98).

For her part, Ms. Seidman has testified that she had no idea that Mr. Perelman had expressed interest in Ms. Lewinsky:

Q: Did [Mr. Durnan] indicate to you that he had spoken to anyone else within MacAndrews or Revlon about Monica Lewinsky?

A: Not that I recall, no.

Q: Do you have knowledge as to whether or not Mr. Perelman spoke with anyone either on the MacAndrews & Forbes side or the Revlon side about Monica Lewinsky?

A: No.

Supp. at 3642 (Seidman Depo. 4/23/98). Rather, Ms. Seidman's consideration of Ms. Lewinsky proceeded on the merits. Indeed, as a result of the interview, Ms. Seidman concluded that Ms. Lewinsky was "bright, articulate and polished," Supp. at 3635 (Seidman FBI 302 1/26/98), and "a talented, enthusiastic, bright young woman" who would be a "good fit in [her] department." Supp. at 3643 (Seidman Depo. 4/23/98). She decided after the interview to hire Ms. Lewinsky, and thereafter called Mr. Durnan "and told him I thought she was great," *Id.*

In sum, Ms. Seidman made the decision to grant an interview and hire Ms. Lewinsky on the merits. She did not even know that Mr. Perelman had expressed any interest in Ms. Lewinsky or that Mr. Jordan had spoken to Mr. Perelman the day before. As amply demonstrated, the House Managers' Jordan-Perelman intervention theory just doesn't hold water.

d. Conclusion

From the preceding discussion of the factual record, two conclusions are inescapable. First, there is simply no direct evidence to support the job-for-silence obstruction theory. From her initial proffer to the last minutes of her grand jury appearance, the testimony of Ms. Lewinsky has been clear and consistent: she was never asked or encouraged to lie or promised a job for her silence or for a favorable affidavit. Mr. Jordan has been equally unequivocal on this point. Second, the "chain of events" circumstantial case upon which this obstruction allegation must rest falls apart after inspection of the full evidentiary record. Ms. Lewinsky's job search began on her own volition and long before she was ever a witness in the *Jones* case. Mr. Jordan's assistance originated with a request from Ms. Currie, which had no connection to events in the *Jones* litigation. No pressure was applied to anyone at any time. And Ms. Lewinsky's ultimate hiring had absolutely no connection to her signing of the affidavit in the *Jones* case. Viewed on this unambiguous record, the job-search allegations are plainly unsupportable.

5. The President denies that he "corruptly allowed his attorney to make false and misleading statements to a Federal judge" concerning Monica Lewinsky's affidavit

Article II (5) charges that the President engaged in an obstruction of justice because he "did not say anything" during his *Jones* deposition when his attorney cited the Lewinsky affidavit to Judge Wright and stated that "there is no sex of any kind in any manner, shape, or form." Committee Report at 72. The rationale underlying this charge of obstruction of justice hinges on an odd combination of a bizarrely heightened legal obligation, a disregard of the actual record testimony, and a good does of amateur psychology. This claim is factually and legally baseless.

The law, of course, imposes no obligation on a client to monitor every statement and representation made by his or her lawyer. Particularly in the confines of an ongoing civil deposition, where clients are routinely counseled to focus on the questions posed of them and their responses and ignore all distractions, it is totally inappropriate to try to remove a President from office because of a statement by his attorney. Indeed, the President forcefully explained to the grand jury that he was not focusing on the exchange between lawyers but instead concentrating on his own testimony:

• "I'm not even sure I paid much attention to what he was saying. I was thinking, I was ready to get on with my testimony here and they were having these constant discussions all through the deposition." App. at 476;

• "I was not paying a great deal of attention to this exchange. I was focusing on my own testimony." App. at 510;

• "I'm quite sure that I didn't follow all the interchanges between the lawyers all that carefully." App. at 510;

• "I am not even sure that when Mr. Bennett made that statement that I was concentrating on the exact words he used." App. at 511;

• "When I was in there, I didn't think about my lawyers. I was, frankly, thinking about myself and my testimony and trying to answer the questions." App. at 512;

• "I didn't pay any attention to this colloquy that went on. I was waiting for my instructions as a witness to go forward. I was worried about my own testimony." App. at 513.

The Committee Report ignores the President's repeated and consistent description of his state of mind during the deposition exchange. Instead, the Committee Report and majority counsel's final presentation undertake a novel exercise in video psychology, claiming that by studying the President's facial expressions and by noting that he was "looking in Mr. Bennett's direction" during the exchange, it necessarily follows that the President was in fact listening to and concentrating on every single word uttered by his attorney[108] and knowingly made a decision not to correct his attorney.

The futility of such an exercise is manifest. It is especially unsettling when set against the President's adamant denials that he harbored any contemporaneous or meaningful realization of his attorney's colloquy with the Judge. The theory is factually flimsy, legally unfounded, and should be rejected.

6. The President denies that he obstructed justice by relating "false and misleading statements" to "a potential witness," Betty Currie, "in order to corruptly influence [her] testimony"

There is no dispute that the President met with his secretary, Ms. Currie, on the day after his *Jones* deposition and discussed questions he had been asked about Ms. Lewinsky. The Managers cast this conversation in the most sinister light possible and alleges that the President attempted to influence the testimony of a "witness" by pressuring Ms. Currie to agree with an inaccurate version of facts about Ms. Lewinsky. The Managers claim that "the President essentially admitted to making these statements when he knew they were not true." House Br. at 47. That is totally false. The President admitted nothing of the sort and the Managers cite nothing in

[108] It is upon this same fanciful methodology that the Committee Report premises the allegation of Article I (3) that the President lied to the grand jury in providing these responses. Citing the President's oft-criticized response about Mr. Bennett's use of the present tense in his statement "there is no sex of any" ("It depends on what the meaning of the word 'is' is." App. at 510), the Committee Report claims that such parsing contradicts the President's claim that he was not paying close attention to the exchange. But contrary to the Committee Report's suggestion, the President's response to this question did not purport to describe the President's contemporaneous thinking at the deposition, but rather only in retrospect whether he agreed with the questioner that it was "an utterly false statement." *Id.* The President later emphasized that he "wasn't trying to give . . . a cute answer" in his earlier explanation, but rather only that the average person thinking in the present tense would likely consider that Mr. Bennett's statement was accurate since the relationship had ended long ago. App. at 513.

support. The President has adamantly denied that he had any intention to influence Ms. Currie's recollection of events or her testimony in any manner. The absence of any such intention is further fortified by the undisputed factual record establishing that to the President's knowledge, Ms. Currie was neither an actual nor contemplated witness in the *Jones* litigation at the time of the conversation. And critically, Ms. Currie testified that, during the conversation, she did not perceive any pressure "whatsoever" to agree with any statement made by the President.

The President's actions could not as a matter of law support this allegation. To obstruct a proceeding or tamper with a witness, there must be both a known proceeding *and* a known witness. In the proceeding that the President certainly knew about—the *Jones* case—Ms. Currie was neither an actual nor prospective witness. As for the only proceeding in which Ms. Currie ultimately became a witness—the OIC investigation—no one asserts the President could have known it existed at that time.

At the time of the January 18 conversation.[109] Ms. Currie was not a witness in the *Jones* case, as even Mr. Starr acknowledged: "The evidence is not that she was on the witness list, and we have never said that she was." Transcript of November 19, 1998 Testimony at 192.

Nor was there any reason to suspect Ms. Currie would play any role in the *Jones* case. The discovery period was, at the time of this conversation, in its final days, and a deposition of Ms. Currie scheduled and completed within that deadline would have been highly unlikely.

Just as the President could not have intended to influence the testimony of "witness" Betty Currie because she was neither an actual nor a prospective witness, so too is it equally clear that the President never pressured Ms. Currie to alter her recollection. Such lack of real or perceived pressure also fatally undercuts this charge. Despite the prosecutor's best efforts to coax Ms. Currie into saying she was pressured to agree with the President's statements, Ms. Currie adamantly denied any such pressure. As she testified:

Q: Now, back again to the four statements that you testified the President made to you that were presented as statements, did you feel pressured when he told you those statements?

A: *None whatsoever.*

Q: What did you think, or what was going through your mind about what he was doing?

A: At the time I felt that he was—I want to use the word shocked or surprised that this was an issue, and he was just talking.

* * * * * * *

Q: That was your impression, that he wanted you to say—because he would end each of the statements with "Right?", with a question.

A: I do not remember that he wanted me to say "Right." *He would say "Right" and I could have said. "Wrong."*

Q: But he would end each of those questions with a "Right?" and you could either say whether it was true or not true?

A: Correct.

Q: Did you feel any pressure to agree with your boss?

A: *None.*

Supp. at 668 (Currie GJ 7/22/98). Ms. Currie explained that she felt no pressure because she basically agreed with the President's statements:

Q: You testified with respect to the statements as the President made them, and, in particular, the four statements that we've already discussed. You felt at the time that they were technically accurate? Is that a fair assessment of your testimony?

A: That's a fair assessment.

Q: But you suggested that at the time. Have you changed your opinion about it in retrospect?

A: I have not changed my opinion, no.

Supp. at 667 (Currie GJ 7/22/98); *see also* Supp. at 534 (Currie FBI 302 1/24/98) ("Currie advised that she responded "right" to each of the statements because as far as she knew, the statements were basically right."); Supp. at 665 (Currie GJ 7/22/98) ("I said 'Right' to him because I thought they were correct, 'Right, you were never really alone with Monica, right'").

[109] Ms. Currie remembers a second conversation similar in substance a few days after the January 18 discussion, but still in advance of the public disclosure of this matter on January 21, 1998. Supp. at 561 (Currie GJ 1/27/98).

What, then, to make of this conversation if there was no effort to influence Ms. Currie's testimony? Well, to understand fully the dynamic, one must remove the memory of all that has transpired since January 21 and place oneself in the President's position after the *Jones* deposition. The President had just faced unexpectedly detailed questions about Ms. Lewinsky. The questions addressed, at times, minute details and at other times contained bizarre inaccuracies about the relationship. As the President candidly admitted in his grand jury testimony, he had long thought the day would come when his relationship with Ms. Lewinsky would become public:

"I formed an opinion early in 1996, once I got into this unfortunate and wrong conduct, that when it stopped, which I knew I'd have to do and which I should have done long before I did, *that she would talk about it.* Not because Monica Lewinsky is a bad person. She's basically a good girl. She's a good young woman with a good heart and a good mind. . . . But I knew that the minute there was no longer any contact, *she would talk about this.* She would have to. She couldn't help it. It was, it was part of her psyche."

App. at 575–76 (emphasis added). Now, with the questioning about Ms. Lewinsky in the *Jones* case and the publication of the first internet report article about Ms. Lewinsky, the President knew that a media storm was about to erupt. And erupt it did.

So it was hardly surprising that the President reached out to Ms. Currie at this time. He was trying to gather all available information and assess the political and personal consequences that this revelation would soon have. Though he did not confide fully in Ms. Currie, he knew Ms. Currie was Ms. Lewinsky's main contact and thus could have additional relevant information to help him assess and respond to the impending media scrutiny. As the President testified:

"I do not remember how many times I talked to Betty Currie or when. I don't. I can't possibly remember that. I do remember, when I first heard about this story breaking, trying to ascertain what the facts were, trying to ascertain what Betty's perception was. I remember that I was highly agitated, understandably, I think."

App. at 593. And further, "[W]hat I was trying to determine was whether my recollection was right and that she was always in the office complex when Monica was there. . . . *I thought what would happen is that it would break in the press, and I was trying to get the facts down."* App. at 507–08 (emphasis added). As the President concluded: "I was not trying to get Betty Currie to say something that was untruthful. I was trying to get as much information as quickly as I could." App. at 508.

Ms. Currie's grand jury testimony confirms the President's "agitated" state of mind and information-gathering purpose for the discussion. She testified that the President appeared, in her words, to be "shocked or surprised that this was an issue, and he was just talking." Supp. at 668 (Currie GJ 7/22/98). She described the President's remarks as "both statements and questions at the same time." Supp. at 534 (Currie FBI 302 1/24/98).

Finally, the inference that the President intended to influence Ms. Currie's testimony before she ever became a witness is firmly undercut by the advice the President gave to her when she ultimately did become a witness in the OIC investigation:

"And then I remember when I knew she was going to have to testify to the grand jury, and I, I felt terrible because she had been through this loss of her sister, this horrible accident Christmas that killed her brother, and her mother was in the hospital. I was trying to do—to make her understand that I didn't want her to, to be untruthful to the grand jury. And if her memory was different than mine, it was fine, just go in there and tell them what she thought. So, that's all I remember."

App. at 593; *see also* App. at 508 ("I think Ms. Currie would also testify that I explicitly told her, once I realized you were involved in the Jones case—you, the Office of Independent Counsel—and that she might have to be called as a witness, that she should just go in there and tell the truth, tell what she knew, and be perfectly truthful.").[110]

In sum, neither the testimony of Ms. Currie nor that of the President—the only two participants in this conversation—supports the inference that the conversation had an insidious purpose. The undisputed evidence shows that Ms. Currie was neither an actual nor contemplated witness in the *Jones* case. And when Ms. Currie

[110] Only groundless speculation and unfounded inferences support the Committee Report's mirror allegation of Article I (4) that the President lied to the grand jury when he described his motivation in discussing these matters with Ms. Currie. That allegation should be rejected for the same reasons discussed more fully in the text of this section.

did ultimately become a witness in the Starr investigation, the President told her to tell the truth, which she did.

7. The President denies that he obstructed justice when he relayed allegedly "false and misleading statements" to his aides

This final allegation of Article II should be rejected out of hand. The President has admitted misleading his family, his staff, and the Nation about his relationship with Ms. Lewinsky, and he has expressed his profound regret for such conduct. But this Article asserts that the President should be impeached and removed from office because he failed to be candid with his friends and aides about the nature of his relationship with Ms. Lewinsky. These allegedly impeachable denials took place in the immediate aftermath of the Lewinsky publicity—*at the very time* the President was denying any improper relationship with Ms. Lewinsky in nearly identical terms on national television. Having made this announcement to the whole country on television, it is simply absurd to believe that he was somehow attempting corruptly to influence the testimony of aides when he told them virtually the same thing at the same time.[111] Rather, the evidence demonstrates that the President spoke with these individuals regarding the allegations because of the longstanding professional and personal relationships he shared with them and the corresponding responsibility he felt to address their concerns once the allegations were aired. The Managers point to no *evidence*—for there is none—that the President spoke to these individuals for any other reason, and certainly not that he spoke with them intending to obstruct any proceeding.[112] They simply assert that since he knew there was an investigation, his intent had to be that they relate his remarks to the investigators and grand jurors. House Br. at 80.

However, there is no allegation that the President attempted to influence these aides' testimony about their *own personal knowledge or observations*. Nor is there any evidence that the President *knew* any of these aides would ultimately be witnesses in the grand jury when he spoke with them. None was under subpoena at the time the denials took place and none had any independent knowledge of any sexual activity between the President and Ms. Lewinsky. Indeed, the only evidence these witnesses could offer on this score was the hearsay repetition of the same public denials that the members of the grand jury likely heard on their home television sets. Under the strained theory of this article, every person who heard the President's public denial could have been called to the grand jury to create still additional obstructions of justice.

To bolster this otherwise unsupportable charge, the Managers point to an excerpt of the President's testimony wherein he acknowledged that, to the extent he shared *with anyone* any details of the facts of his relationship with Ms. Lewinsky, they could conceivably be called before the grand jury—which for the sake of his friends the President wanted to avoid:

> "I think I was quite careful what I said after [January 21]. I may have said something to all of these people to that effect [denying an improper relationship], but I'll also—whenever anybody asked me any details, I said, look, I don't want you to be a witness or I turn you into a witness or give you information that could get you in trouble. I just wouldn't talk. I, by and large, didn't talk to people about this."

App. at 647. The point was not that the President believed these people would be witnesses and so decided to mislead them, but rather that he decided to provide as little information as possible (consistent with his perceived obligation to address their legitimate concerns) in order to keep them from becoming witnesses solely because of what he told them.

In conclusion, this Article fails as a matter of law and as a matter of common sense. It should be soundly rejected.

VI. The Structural Deficiencies of the Articles Preclude a Constitutionally Sound Vote

The Constitution prescribes a strict and exacting standard for the removal of a popularly elected President. Because each of the two articles charges multiple unspecified wrongs, each is unconstitutionally flawed in two independent respects.

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[111] As the Supreme Court has held, to constitute obstruction of justice such actions must be taken "with an intent to influence judicial or grand jury proceedings." *United States v. Aguilar,* 515 U.S. 592, 599 (1995).

[112] The Committee Reports's allegation under Article I (4) that the President committed perjury before the grand jury when, in the course of admitting that he misled his close aides, he stated that he endeavored to say to his aides "things that were true," App. at 557–60, without disclosing the full nature of the relationship is simply bizarre.

First, by charging multiple wrongs in one article, the House of Representatives has made it impossible for the Senate to comply with the Constitutional mandate that any conviction be by the concurrence of two-thirds of the members. Since Senate Rules require that an entire article be voted as a unit, sixty-seven Senators could conceivably vote to convict while in wide disagreement as to the alleged wrong committed—for example, they could completely disagree on what statement they believe is false—in direct violation of the Constitutional requirements of "Concurrence" and due process.

Second, by charging perjury without identifying a single allegedly perjurious statement, and charging obstruction of justice without identifying a single allegedly obstructive action by the President, the House of Representatives has failed to inform the Senate either of the statements it agreed were perjurious (if it agreed), or of the actual conduct by the President that it agreed constituted obstruction of justice (again, if it agreed). The result is that the President does not have the most basic notice of the charges against him required by due process and fundamental fairness. He is not in a position to defend against anything other than a moving target. The guesswork involved even in identifying the charges to be addressed in this Trial Memorandum highlights just how flawed the articles are.[113]

The result is a pair of articles whose structure does not permit a constitutionally sound vote to convict. If they were counts in an indictment, these articles would not survive a motion to dismiss. Under the unique circumstances of an impeachment trial, they should fail:

A. THE ARTICLES ARE BOTH UNFAIRLY COMPLEX AND LACKING IN SPECIFICITY

A cursory review of the articles demonstrates that they each allege multiple and unspecified acts of wrongdoing.

1. The Structure of Article I

Article I accuses the President of numerous different wrongful actions. The introductory paragraph charges the President with (i) violating his constitutional oath

[113] The House Managers cannot constitutionally unbundle the charges in the articles or provide the missing specifics. This is because the Constitution provides that only the House of Representatives can amend articles of impeachment, and judicial precedent demonstrates that unduly vague indictments cannot be cured by a *prosecutor* providing a bill of particulars. Only the charging body—here, the House—can particularize an impermissibly vague charge.

Indeed, Senate precedent confirms that the entire House must grant particulars when articles of impeachment are not sufficiently specific for a fair trial. During the 1933 impeachment trial of Judge Harold Louderback, counsel for the Judge filed a motion to make the original Article V, the omnibus or "catchall" article, more definite. 77 Cong Rec. 1852, 1854 (1933). The House Managers unanimously consented to the motion, which they considered to be akin to a motion for a bill of particulars, and the full House amended Article V to provide the requested specifics. *Id*. Thereafter, the Clerk of the House informed the Senate that the House had adopted an amendment to Article V. *Id.* Judge Louderback was then tried on the amended article. Judge Louderback was subsequently acquitted on all five articles. Impeachment of Richard M. Nixon, President of the United States, Report by Staff of the Impeachment Inquiry, House Comm. on the Judiciary, 93d Cong., 2d Sess., Appendix B at 55 (Feb. 1974).

The power to define and approve articles of impeachment is vested by the Constitution exclusively in the House of Representatives. U.S. Const. Art I, § 2, cl. 5. It follows that any alteration of an Article of Impeachment can be performed only by the House. The House cannot delegate (and has not delegated) to the Managers the authority to amend or alter the Articles, and Senate precedent demonstrates that only the House (not the Managers unilaterally) can effect an amendment to articles of impeachment.

Case law is consistent with this precedent. When indictments are unconstitutionally vague, they cannot be cured by a prosecutor's provision of a bill of particulars, because only the charging body can elaborate upon vague charges. As the Supreme Court noted in *Russell* v. *United States,* 369 U.S. 749, 771 (1962):

"It is argued that any deficiency in the indictments in these cases could have been cured by bills of particulars. But it is a settled rule that a bill of particular cannot save an invalid indictment . . . To allow the prosecutor, or the court, to make a subsequent guess as to what was in the minds of the grand jury at the time they returned the indictment would deprive the defendant of a basic protection which the guaranty of the intervention of a grand jury was designed to secure. For a defendant could then be convicted on the basis of facts not found by, and perhaps not even presented to, the grand jury which indicted him. This underlying principle is reflected by the settled rule in the federal courts that an indictment may not be amended except by resubmission to the grand jury. . . ."

See also Stirone v. *United States,* 361 U.S. 212, 214, 216 (1960) quoting *Ex Parte Bain*, 121 U.S. 1 (1887) ("If it lies within the province of a court to charging part to an indictment to suit its own notions of what it ought to have been or what they grand jury would probably have made it if their attention had been called to suggested changes, the great importance which the common law attaches to an indictment by a grand jury . . . may be frittered away until its value is almost destroyed.").

faithfully to execute his office and defend the Constitution; (ii) violating his constitutional duty to take care that the laws be faithfully executed; (iii) willfully corrupting and manipulating the judicial process; and (iv) impeding the administration of justice.

The second paragraph charges the President with (a) perjurious, (b) false, and (c) misleading testimony to the grand jury concerning "one or more" of four different subject areas:

(1) the nature and details of this relationship with a subordinate government employee;

(2) prior perjurious, false and misleading testimony he gave in a Federal civil rights action brought against him;

(3) prior false and misleading statements he allowed his attorney to make to a federal judge in that action;

(4) his corrupt efforts to influence the testimony of witnesses and to impede the discovery of evidence in that civil rights action.

The third paragraph alleges that, as a consequence of the foregoing, the President has, to the manifest injury of the people of the United States:

- undermined the integrity of his office;
- brought disrepute on the Presidency;
- betrayed his trust as President; and
- acted in a manner subversive of the rule of law and justice.

It is imperative to note that although Article I alleges "perjurious, false and misleading" testimony concerning "one or more" of four general subject areas, it does not identify the particular sworn statements by the President that were allegedly "perjurious," (and therefore potentially illegal), or "false" or "misleading" (and therefore not unlawful). In fact, contrary to the most basic rules of fairness and due process, Article I does not identify a single specific statement that is at issue.

In sum, Article I appears to charge the President with four general forms of wrongdoing (violations of two oaths, manipulation of legal process, impeding justice), involving three (perjurious, false, misleading) distinct types of statements, concerning different subjects (relationship to Ms. Lewinsky, prior deposition testimony, prior statements of his attorney, obstruction of justice),[114] resulting in four species of harms either to the Presidency (undermining its integrity, bringing it into disrepute) or to the people (acting in a manner subversive of the rule of law and to the manifest injury of the people). And it alleges all of this without identifying a single, specific perjurious, false or misleading statement.

Absent a clear statement of which statements are alleged to have been perjurious, and which specific acts are alleged to have been undertaken with the purpose of obstructing the administration of justice, it is impossible to prepare a defense. It is a fundamental tenet of our jurisprudence that an accused must be afforded notice of the specific charges against which he must defend. Neither the Referral of the Office of the Independent Counsel, nor the Committee Report of the Judiciary Committee, nor the House Managers' Trial Memorandum was adopted by the House, and none of them can provide the necessary particulars. It is impossible to know whether the different statements and acts charged in the Referral, or the Report, or the Trial Memorandum, or all, or none, are what the House had in mind when it passed the Articles.

2. The Structure of Article II

Article II accuses the President of a variety of wrongful acts. The introductory paragraph charges the President with (i) violating his constitutional oath faithfully to execute his office and defend the Constitution and (ii) violating his constitutional duty to take care that the laws be faithfully executed by (iii) preventing, obstructing and impeding the administration of justice by engaging (personally and through subordinates and agents) in a scheme designed to delay, impede, cover up, and conceal the existence of evidence and testimony related to a Federal civil rights action.

The second paragraph specifies the various ways in which the violations in the first paragraph are said to have occurred. It states that the harm was effectuated by "means" that are not expressly defined or delimited, but rather are said to include "one or more" of seven "acts" attributed to the President:

(1) corruptly encouraging a witness to execute a perjurious, false and misleading affidavit;

(2) corruptly encouraging a witness to give perjurious, false and misleading testimony if called to testify;

(3) corruptly engaging in, encouraging or supporting a scheme to conceal evidence;

[114] It appears that each of these topic areas includes various, unspecified allegedly perjurious, false and misleading statements.

(4) intensifying and succeeding in an effort to secure job assistance to a witness in order to corruptly prevent the truthful testimony of that witness at a time when that witness's truthful testimony would have been harmful;

(5) allowing his attorney to make false and misleading statements to a federal judge in order to prevent relevant questioning;

(6) relating a false and misleading account of events to a potential witness in a civil rights action in order to corruptly influence the testimony of that person;

(7) making false and misleading statements to potential witnesses in a Federal grand jury proceeding in order to corruptly influence their testimony and causing the grand jury to receive false and misleading information.

The third paragraph alleges that, as a result of the foregoing, the President has, to the manifest injury of the people of the United States:

- undermined the integrity of his office;
- brought disrepute on the Presidency;
- betrayed his trust as President; and
- acted in a manner subversive of the rule of law and justice.

As with the first article, Article II does not set forth a single specific act alleged to have been performed by the President. Instead, it alleges general "encourage[ment]" to execute a false affidavit, provide misleading testimony, and conceal subpoenaed evidence. This Article also includes general allegations that the President undertook to "corruptly influence" and/or "corruptly prevent" the testimony of potential witnesses and that he "engaged in . . . or supported" a scheme to conceal evidence. Again, the Senate and the President have been left to guess at the charges (if any) actually agreed upon by the House.

B. CONVICTION ON THESE ARTICLES WOULD VIOLATE THE CONSTITUTIONAL REQUIREMENT THAT TWO-THIRDS OF THE SENATE REACH AGREEMENT THAT SPECIFIC WRONGDOING HAS BEEN PROVEN

1. The Articles Bundle Together Disparate Allegations in Violation of the Constitution's Requirements of Concurrence and Due Process

a. The Articles Violate the Constitution's Two-Thirds Concurrence Requirement

Article I, section 3 of the Constitution provides that "no person shall be convicted [on articles of impeachment] without the Concurrence of two thirds of the Members present." U.S. Const. Art. I, § 3, cl. 6. The Constitution's requirement is plain. These must be "Concurrence," which is to say genuine, reliably manifested, agreement, among those voting to convict. Both the committing of this task to the Senate and the two-thirds requirement are important constitutional safeguards reflecting the Framers' intent that conviction not come easily. Conviction demands real and objectively verifiable agreement among a substantial supermajority.

Indeed, the two-thirds supermajority requirement is a crucial constitutional safeguard. Supermajority provisions are constitutional exceptions [115] to the presumption that decisions by legislative bodies shall be made by majority rule.[116] These exceptions serve exceptional ends. The two-thirds concurrence rule serves the indispensable purpose of protecting the people who chose the President by election. By giving a "veto" to a minority of Senators, the Framers sought to ensure the rights of an electoral majority—and to safeguard the people in their choice of Executive. Only the Senate and only the requirement of a two-thirds concurrence could provide that assurance.

The "Concurrence" required is agreement that the charges stated in specific articles have in fact been proved, and the language of those articles is therefore critical. Since the House of Representatives is vested with the "sole Power of Impeachment," U.S. Const. Art. I, § 2, cl. 5, the form of those articles cannot be altered by the Senate. And Rule XXIII of the Rules of Procedure and Practice in the Senate when Sitting on Impeachment Trials ("Senate Rules") provides that "[a]n article of impeachment shall not be divisible for the purpose of voting thereon at any time during the trial."

It follows that each Senator may vote on an article only in its totality. By the express terms of Article I, a Senator may vote for impeachment if he or she finds that there was perjurious, false and misleading testimony in *any* "one or more" of four topic areas. But that prospect creates the very real possibility that "conviction"

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[115] *See e.g.,* U.S. Const. Art. I, § 7, cl. 2 (two thirds vote required to override Presidential veto); U.S. Const. Art. II, § 2, cl. 2 (two thirds required for ratification of treaties); U.S. Const. Art. V (two thirds required to propose constitutional amendments); U.S. Const. Art. I, § 5, cl. 2 (two thirds required to expel members of Congress).

[116] Madison referred to majority voting as "the fundamental principal of free government." *Federalist No. 58* at 248 (G. Wills ed. 1982).

could occur even though fewer than two-thirds of the Senators actually agree that any particular false statement was made.[117] Put differently, the article's structure presents the possibility that the President could be convicted on Article I even though he would have been acquitted if separate votes were taken on individual allegedly perjurious statements. To illustrate the point, consider that it would be possible for conviction to result even with as few as seventeen Senators agreeing that any single statement was perjurious, because seventeen votes for one statement in each of four categories would yield 68 votes, one more than necessary to convict. The problem is even worse if Senators agree that there is a single perjurious statement but completely disagree as to which statement within the 176 pages of transcript they believe is perjurious. Such an outcome would plainly violate the Constitution's requirement that there be conviction only when a two-thirds majority agrees.

The very same flaw renders Article II unconstitutional as well. That Article alleges a scheme of wrongdoing effected through "means" including "one or more" of seven factually and logically discrete "acts." That compound structure is fraught with the potential to confuse. For example, the Article alleges both concealment of gifts on December 28, 1997, and false statements to aides in late January 1998. These two allegations involve completely different types of behavior. They are alleged to have occurred in different months. They involved different persons. And they are alleged to have obstructed justice in different legal proceedings. In light of Senate Rule XXIII's prohibition on dividing articles, the combination of such patently different types of alleged wrongdoing in a single article creates the manifest possibility that votes for conviction on this article would not reflect any two-third agreement whatsoever.

The extraordinary problem posed by such compound articles is well-recognized and was illustrated by the proceedings in the impeachment of Judge Walter Nixon. Article III of the Nixon proceedings, like the articles here, was phrased in the disjunctive and charged multiple false statements as grounds for impeachment. Judge Nixon moved to dismiss Article III on a number of grounds, including on the basis of its compound structure.[118] Although that motion was defeated in the full Senate by a vote of 34–63,[119] the 34 Senators who voted to dismiss were a sufficient number to block conviction on Article III.

Judge Nixon (although convicted on the first two articles) was ultimately acquitted on Article III by a vote of 57 (guilty) to 40 (not guilty).[120] Senator Biden, who voted not guilty on the article, stated that the structure of the article made it "possible . . . for Judge Nixon to be convicted under article III even though two-thirds of the members present did not agree that he made any one of the false statements."[121] Senator Murkowski concurred: "I don't appreciate the omnibus nature of article III, and I agree with the argument that the article could easily be used to convict Judge Nixon by less than the super majority vote required by the Constitution." *Id.* at 464.[122] And Senator Dole stated that "Article III is redundant, complex and unnecessarily confusing. . . . It alleges that Judge Nixon committed five different offenses in connection with each of fourteen separate events, a total of seventy charges. . . . [I]t was virtually impossible for Judge Nixon and his attorney's to prepare an adequate defense."[123]

In his written statement filed after the voting was completed, Senator Kohl pointed out the dangers posed by combining multiple accusations in a single article:

"Article III is phrased in the disjunctive. It says that Judge Nixon concealed his conversations through 'one or more' of 14 false statements.

"This wording presents a variety of problems. First of all, it means that Judge Nixon can be convicted even if two thirds of the Senate does not agree on which of his particular statements were false. . . .

"The House is telling us that it's OK to convict Judge Nixon on Article III even if we have different visions of what he did wrong. *But that's not fair to Judge Nixon, to the Senate, or to the American people.* Let's say we do convict on Article III. *The*

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[117] There remains the additional problem that the articles allege not specific perjurious statements, but perjury within a topic area. Perjury as to *a category* (rather than as to specific statements) is an incomprehensible notion.

[118] *See* Report of the Senate Impeachment Trial Committee on the Articles of Impeachment Against Judge Walter L. Nixon, Jr., Hearings Before the Senate Impeachment Trial Committee, 101st Cong., 1st Sess. at 257, 281–84 (1989).

[119] *Judge Nixon Proceedings* at 430–32.

[120] *Id.* at 435–36.

[121] Statement of Senator Joseph R. Biden, Jr., *id.* at 459.

[122] *See also* Statement of Senator Bailey, Impeachment of Judge Harold Louderback, 77 Cong. Rec. 4238 (May 26, 1933) (respondent should be tried on individual articles and not on all of them assembled into one article).

[123] Statement of Senator Robert Dole, *Judge Nixon Proceedings* at 457.

American people—to say nothing of history—would never know exactly which of Judge Nixon's statements were regarded as untrue. They'd have to guess. What's more, this ambiguity would prevent us from being totally accountable to the voters for our decision."[124]

As noted, the Senate acquitted Judge Nixon on the omnibus article—very possible because of the constitutional and related due process and fairness concerns articulated by Senator Kohl and others.[125]

The constitutional problems identified by those Senators are significant when a single federal judge (one of roughly 1000) is impeached. But when the Chief Executive and sole head of one entire branch of our government stands accused, those infirmities are momentous. Fairness and the appearance of fairness require that the basis for any action this body might take be clear and specific. The Constitution clearly forbids conviction unless two thirds of the Senate concurs in a judgment. Any such judgment would be meaningless in the absence of a finding that specific, identifiable, wrongful conduct has in fact occurred. No such conclusion is possible under either article as drafted.

b. Conviction on the Articles Would Violate Due Process Protections that Forbid Compound Charges in a Single Accusation

Even apart from the Constitution's clear requirement of "Concurrence" in Article I, section 3, the fundamental principles of fairness and due process that underlie our Constitution and permeate our procedural and substantive law compel the same outcome. In particular, the requirement that there be genuine agreement by the deciding body before an accused is denied life, liberty or property is a cornerstone of our jurisprudence.[126]

While in the federal criminal context due process requires that there be genuine agreement among the entire jury, *see United States* v. *Fawley,* 137 F.3d 458, 470 (7th Cir. 1998), *Schad* v. *Arizona,* 501 U.S. 624 (1991) (plurality), in the impeachment context, that requirement of genuine agreement must be expressed by a two-thirds supermajority. But the underlying due process principles is the same in both settings. This basic principle is bottomed on two fundamental notions: (1) that there be genuine agreement—mutuality of understanding—among those voting to convict, and (2) that the unanimous verdict be understood (by the accused and by the public) to have been the product of genuine agreement.

This principle is given shape in the criminal law in the well-recognized prohibition on "duplicitous" charges. "Duplicity is the joining in a single count of two or more distinct and separate offenses." *United States* v. *UCO Oil,* 546 F.2d 833, 835 (9th Cir. 1976.) In the law of criminal pleading, a single count that charges two or more separate offenses is duplicitous. *See United States* v. *Parker,* 991 F.2d 1493, 1497–98 (9th Cir. 1993); *United States* v. *Hawkes,* 753 F.2d 355, 357 (4th Cir. 1985).[127] A duplicitous charge in an indictment violates the due process principle that "the

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[124] Statement of Senator Herbert H. Kohl, *id.* at 449 (emphasis added). Senator Kohl did not believe that the constitutional question concerning two-thirds concurrence had to be answered in the Judge Nixon proceedings because he believed that the bundling problem created an unfairness (in effect, a due process violation) that precluded conviction. *Id.*

[125] *See also* Constitutional Grounds for Presidential Impeachment: Modern Precedents, Report by the Staff of the Impeachment Inquiry, Comm. on Judiciary, 105th Cong., 2d Sess. at 12 (1998) (discussing Sen. Kohl's position).

[126] Judicial precedent is persuasive here on these due process and fairness questions. Indeed, in prior impeachment trials, the Senate has been guided by decisions of the courts, because they reflect cumulative wisdom concerning fairness and the search for justice. During the impeachment trial of Judge Alcee L. Hastings, Senator Specter stated:

"[T]he impeachment process relies in significant measure on decisions of the court and the opinion of judges . . . [T]he decisions and interpretations of the courts should be highly instructive to us. In our system of Government, it has been the courts that through the years have been called upon to construe, define and apply the provisions of our Constitution. Their decisions reflect our values and our evolving notions of justice . . . Although we are a branch of Government coequal with the judiciary, and by the Constitution vested with the 'sole' power to try impeachments, I believe that the words and reasoning of judges who have struggled with the meaning and application of the Constitution and its provisions ought to be given great heed because that jurisprudence embodies the values of fairness and justice that ought to be the polestar of our own determinations." (S. Doc. 101–18, 101st Cong., 1st Sess. at 740–41.)

(As Senator Specter observed, judicial rules have been developed and refined over the years to assure that court proceedings are fair, and that an accused is assured the necessary tools to prepare a proper defense, including proper notice.

[127] *See also* Federal Rules of Criminal Procedure, Rule 8(a): "Two or more offenses may be charged in the same indictment or information *in a separate count for each offense* if the offenses charged . . . are of the same or similar charter or are based on the same act or transaction or on two or more acts or transactions connected together or constituting parts of a common scheme or plan." (emphasis added).

requisite specificity of the charge may not be compromised by the joining of separate offenses." *Schad* v. *Arizona,* 501 U.S. 624, 633 (1991) (plurality).

More specifically, a duplicitous charge poses the acute danger of conviction by a less-than-unanimous jury; some jurors may find the defendant guilty of one charge but not guilty of a second, while other jurors find him guilty of a second charge but not the first. *See United States* v. *Saleh,* 875 F.2d 535, 537 (6th Cir. 1989); *United States* v. *Stanley,* 597 F.2d 866, 871 (4th Cir. 1979); *Bins* v. *United States,* 331 F.2d 390, 393 (5th Cir. 1964).[128] Our federal system of justice simply does not permit conviction by less than unanimous agreement concerning a single, identified charge. *See United States* v. *Fawley,* 137 F.3d 471 (7th Cir. 1998) (conviction requires unanimous agreement as to particular statements); *United States* v. *Holley,* 942 F.2d 916, 929 (5th Cir. 1991) (reversal required where no instruction was given to ensure that all jurors concur in conclusion that at least one particular statement was false); *see also United States* v. *Gipson,* 553 F.2d 453, 458–59 (5th Cir. 1977) (right to unanimous verdict violated by instruction authorizing conviction if jury found defendant committed any one of six acts proscribed by statute).[129] The protection against conviction by less than full agreement by the factfinders is enshrined in Rule 31(a) of the Federal Rules of Criminal Procedure which dictates that "[t]he verdict shall be unanimous." [130]

Thus, where the charging instrument alleges multiple types of wrongdoing, the unanimity requirement "means more than a conclusory agreement that the defendant has violated the statute in question; *there is a requirement of substantial agreement as to the principal factual elements underlying a specified offense." United States* v. *Ferris,* 719 F.2d 1405, 1407 (9th Cir. 1983) (emphasis added). Accordingly, although there need not be unanimity as to every bit of underlying evidence, due process "does require unanimous agreement as to the nature of the defendant's violation, not simply that a violation has occurred." *McKoy* v. *North Carolina,* 494 U.S. 433, 449 n.5 (1990) (Blackmun, J., concurring). Such agreement is necessary to fulfill the demands of fairness and rationality that inform the requirement of due process. *See Schad,* 501 U.S. at 637.[131]

Where multiple accusations are combined in a single charge, neither the accused nor the factfinder can know precisely what that charge means. When the factfinder body cannot agree upon the meaning of the charge, it cannot reach genuine agreement that conviction is warranted. These structural deficiencies preclude a constitutionally sound vote on the articles.

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[128] Each of the four categories charged here actually comprises multiple allegedly perjurious statements. Thus, the dangers of duplicitousness are increased exponentially.

[129] The Supreme Court has stated that "[u]nanimity in jury verdicts is required where the Sixth and Seventh Amendments apply." *Andres* v. *United States,* 333 U.S. 740, 748 (1948); *Apodaca* v. *Oregon,* 406 U.S. 404 (1972) (same).

[130] That rule gives expression to a criminal defendant's due process right to a unanimous verdict. *See United States* v. *Fawley,* 137 F.2d 458, 4771 (7th Cir. 1988). Because the Constitution does not tolerate the risk of a less than unanimous verdict in the criminal setting, "where the complexity of a case or other factors create the potential for confusion as to the legal theory or factual basis which sustains a defendant's conviction, a specific unanimity instruction is required." *United States* v. *Jackson,* 879 F.2d 85, 88 (3d Cir. 1989) (citing *United States* v. *Beros,* 833 F.2d 455, 460 (3d Cir. 1987)). Such instructions are required where the government charges several criminal acts, any of which alone could have supported the offense charged, because of the need to provide sufficient guidance to assure that all members of the jury were unanimous on the same act or acts of illegality. *Id.* at 88. As the Seventh Circuit recently concluded in a case alleging multiple false statements, "the jury should have been advised that in order to have convicted [the defendant], they had to unanimously agree that a particular statement contained in the indictment was falsely made." *Fawley,* 137 F.2d at 470.

[131] In our federal criminal process, a duplicitous pleading problem may sometimes be cured by instructions to the jury requiring unanimous agreement on a single statement, *see Fawley, supra,* but that option is not present here. Not only do the Senate Rules not provide for the equivalent of jury instructions, they expressly *rule out* the prospect of subdividing an article of impeachment for purposes of voting. *See* Senate Impeachment Rule XXIII. Nor is the duplicitousness problem presented here cured by any specific enumeration of elements necessary to be found by the factfinder. *See, e.g., Santarpio* v. *United States,* 560 F.2d 448 (1st Cir. 1977) (duplicitous charge harmless because indictments adequately set out the elements of the federal crime; appellants were not misled or prejudiced). Article I does not enumerate specific elements to be found by the factfinder. To the contrary, the Article combines multiple types of wrong, allegedly performed by different types of statements, the different types occurring in multiple subject matter areas, and all having a range of allegedly harmful effects.

C. CONVICTION ON THESE ARTICLES WOULD VIOLATE DUE PROCESS PROTECTIONS PROHIBITING VAGUE AND NONSPECIFIC ACCUSATIONS

1. The Law of Due Process Forbids Vague and Nonspecific Charges

Impermissibly vague indictments must be dismissed, because they "fail[] to sufficiently apprise the defendant 'of what he must be prepared to meet.'" *United States* v. *Russell,* 369 U.S. 749, 764 (1962) (internal quotation omitted). In *Russell,* the indictment at issue failed to specify the subject matter about which the defendant had allegedly refused to answer questions before a Congressional subcommittee. Instead, the indictment stated only that the questions to which the answers were refused "were pertinent to the question then under inquiry" by the Subcommittee. *Id.* at 752. The Court held that because the indictment did not provide sufficient specificity, it was unduly vague and therefore had to be dismissed. *Id.* at 773. The Supreme Court explained that dismissal is the only appropriate remedy for an unduly vague indictment, because only the charging body can elaborate upon vague charges:

"To allow the prosecutor, or the court, to make a subsequent guess as to what was in the minds of the grand jury at the time they returned the indictment would deprive the defendant of a basic protection which the guaranty of the intervention of a grand jury was designed to secure. For a defendant could then be convicted on the basis of facts not found by, and perhaps not even presented to, the grant jury which indicted him. This underlying principle is reflected by the settled rule in the federal courts that an indictment may not be amended except by resubmission to the grand jury . . ."

Id. at 771. *See also Stirone* v. *United States,* 361 U.S. 212, 216 (1960); *see also United States* v. *Lattimore,* 215 F.2d 847 (D.C. Cir. 1954) (perjury count too vague to be valid cannot be cured even by bill of particulars); *United States* v. *Tonelli,* 557 F.2d 194, 200 (3d Cir. 1978) (vacating perjury conviction where "the indictment . . . did not 'set forth the precise falsehood[s] alleged'").

Under the relevant case law, the two exhibited Articles present paradigmatic examples of charges drafted too vaguely to enable the accused to meet the accusations fairly. More than a century ago, the Supreme Court stated that "[i]t is an elementary principle of criminal pleading, that where the definition of an offence, whether it be at common law or by statute, includes generic terms, it is not sufficient that the indictment shall charge the offence in the same generic terms as in the definition; but it must state the species—it must descend to particulars." *United States* v. *Cruikshank,* 92 U.S. 542, 558 (1875). The Court has more recently emphasized the fundamental "vice" of nonspecific indictments: that they "fail[] to sufficiently apprise the defendant 'of what he must be prepared to meet.'" *Russell,* 369 U.S. at 764.

The Supreme Court emphasized in *Russell* that specificity is important not only for the defendant, who needs particulars to prepare a defense, but also for the decision-maker, "so it may decide whether [the facts] are sufficient in law to support a conviction, if one should be had." *Id.* at 768 (internal citation and quotation marks omitted). An unspecific indictment creates a "moving target" for the defendant exposing the defendant to a risk of surprise through a change in the prosecutor's theory. "It enables his conviction to rest on one point and the affirmance of the conviction to rest on another. It gives the prosecution free hand on appeal to fill in the gaps of proof by surmise and conjecture." *Russell,* 369 U.S. at 766. Ultimately, an unspecific indictment creates a risk that "a defendant could . . . be convicted on the basis of facts not found by, and perhaps not even presented to, the grand jury which indicted him." *Id.* at 770.

2. The Allegations of Both Articles Are Unconstitutionally Vague

Article I alleges that in his August 17, 1998 grand jury testimony, President Clinton provided "perjurious, false and misleading" testimony to the grand jury concerning "one or more" of four subject areas. Article I does not, however, set forth a single specific statement by the President upon which its various allegations are predicated. The Article haphazardly intermingles alleged criminal conduct with totally lawful conduct, and its abstract generalizations provide no guidance as to actual alleged perjurious statements.

Article I thus violates the most fundamental requirement of perjury indictments. It is fatally vague in three distinct respects: (1) it does not identify *any* statements that form the basis of its allegations,[132] (2) it therefore does not specify which of

[132] One of the cardinal rules of perjury cases is that "[a] conviction under 18 U.S.C. § 1623 may not stand where the indictment fails to set forth the precise falsehood alleged and the fac-

the President's statements to the grand jury were allegedly "perjurious," which were allegedly "false," and which were allegedly "misleading," and (3) it does not even specify the *subject matter* of any alleged perjurious statement.

The first defect is fatal, because it is axiomatic that if the precise perjurious statements are not identified in the indictment, a defendant cannot possibly prepare his defense properly. *See, e.g., Slawik,* 548 F.2d 75, 83–84 (3d Cir. 1977). Indeed, in past impeachment trials in the Senate where articles of impeachment alleged the making of false statements, the false statements were specified in the Articles. For example, in the impeachment trial of Alcee L. Hastings, Articles of Impeachment II–XIV specified the exact statements that formed the basis of the false statement allegations against Judge Hastings.[133] Similarly, in the impeachment trial of Walter L. Nixon, Jr., Articles of Impeachment I–III specified the exact statements that formed the basis of their false statement allegations.[134] In this case, Article I falls far short of specificity standards provided in previous impeachment trials in the Senate.

As to the second vagueness defect, there is a significant legal difference between, on the one hand, statements under oath which are "perjurious," and those, on the other hand, which are simply "false" or misleading." Only the former could form the basis of a criminal charge. The Supreme Court has emphatically held that "misleading" statements alone *cannot* form the basis of a prejury charge. In *Bronston* v. *United States,* 409 U.S. 352 (1973), the Court held that literally true statements are by definition non-perjurious, and "it is no answer to say that here the jury found that [the defendant] intended to *mislead* his examiner," since "[a] jury should not be permitted to enage in conjecture whether an unresponsive answer. . . was intended to *mislead* or divert the examiner." *Id.* at 358–60 (emphasis added). The Court emphasized that "the perjury statute is not to be loosely construed, nor the statute invoked simply because a wily witness succeeds in derailing the questioner so long as the witness speakes the literal truth." *Id.* Thus, specification of the exact statements alleged to be prejurious is required, because "to hold otherwise would permit the trial jury to inject its inferences into the grand jury's indictment, and would allow defendants to be convicted for immaterial falsehoods or for 'intent to mislead' or 'perjury by implication,' which Bronston specifically prohibited." Slawik, 538 F.2d at 83–84 (emphasis added). Thus, if the House meant that certain statements were misleading but literally truthful, they might be subject to a motion to dismiss on the ground that the offense was not impeachable.

The same is true for allegedly "false" answers, because it is clear that mere "false" answers given under oath, without more, are not criminal. 18 U.S.C. § 1623, the statute proscribing perjury before a federal grand jury, requires additional elements beyond falsity, including the defendant's specific intent to testify falsely and the statement's materiality to the proceeding. A defense to a perjury charge is therefore tied directly to the specific statement alleged to have been perjurious. Did the defendant *know* the particular answer was false? Was it material?[135]

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tual basis of its falsity with sufficient clarity to permit a jury to determine its verity and to allow meaningful judicial review of the materiality of those falsehoods." *United States* v. *Slawik,* 548 F.2d 75, 83–84 (3d Cir. 1977). Courts have vacated convictions for perjury in instances where "the indictment . . . did not 'set forth the precise falsehood(s) alleged." *Tonelli,* 577 F.2d at 200.

[133] Proceedings of the United States Senate in the Impeachment Trial Alcee L. Hastings, 101st Cong., 1st. Sess., S. Doc. 101–18 at 4–7 (1989). *See, e.g., Id.* at 2 (Article II alleging that the false statement was "that Judge Hastings and Wiliam Borders, of Washington, D.C., never made any agreement to solicit a bribe from defendants in *United States* v. *Romano,* a case tried before Judge Hastings").

[134] Proceedings of the United States Senate in the Impeachment Trial of Walter L. Nixon, Jr., 101st Cong., 1st Sess., S. Doc. 101–22 at 430–32 (1989). *See, e.g., Id.,* at 432 (Article I alleging that the false statement was "Forrest County District Attorney Paul Holmes never discussed the Drew Fairchild case with Judge Nixon.").

[135] Not surprisingly, courts have specifically held that because of these additional elements (the lack of which may undermine a perjury prosecution), a defendant must know exactly which statements are alleged to form the basis of a perjury indictment to test whether the requisite elements are present. *See, e.g., United States* v. *Lattimore,* 215 F.2d 847, 850 (D.C. Cir. 1954) ("The accused is entitled under the Constitution to be advised as to every element in respect to which it is necessary for him to prepare a defense"). For example, because of the intent requirement, one potential defense to a perjury prosecution is that the *question* to which the allegedly perjurious statement was addressed was fundamentally ambiguous, as courts have held that fundamentally ambiguous questions cannot as a matter of law produce perjurious answers. *See, e.g., Tonelli,* 577 F.2d at 199; *United States* v. *Wall,* 371 F.2d 398 (6th Cir. 1967). A separate defense to a perjury prosecution is that the statement alleged to have been perjurious was not material to the proceeding. Thus, "false" statements alone are not perjurious if they were not material to the proceeding. By not specifying which statements are alleged to be "false" or "misleading," Article I precludes the President from preparing a materiality defense, and it also

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Article I's third vagueness defect is that it does not specify the *subject matter* of the alleged perjurious statements. Instead, it simply alleges that the unspecified statements by the President to the grand jury were concerning "one or more" of four enumerated areas. The "one or more" language underscores the reality that the President—and, critically, the Senate—cannot possibly know what the House majority had in mind, since it may have failed even to agree on the subject matter of the alleged perjury. The paramount importance of this issue may be seen by reference to court decisions holding that a jury has to "*unanimously* agree that a *particular statement* contained in the indictment was falsely made." *United States* v. *Fawley,* 137 F.3d 458, 471 (7th Cir. 1998) (emphasis added); *see also* discussion of unanimity requirement in Section VI.B, *supra.*

Article II is also unconstitutionally vague. It alleges that the President "obstructed and impeded the administration of justice * * * in a course of conduct or scheme designed to delay, impede, cover up and conceal" unspecified evidence and testimony in the *Jones* case. It sets forth seven instances in which the President allegedly "encouraged" false testimony or the concealment of evidence, or "corruptly influenced" or "corruptly prevented" various other testimony, also unspecified. In fact, not only does Article II fail to identify a single specific act performed by the President in this alleged scheme to obstruct justice, it does not even identify the "potential witnesses" whose testimony the President allegedly sought to "corruptly influence."

The President cannot properly defend against Article II without knowing, at a minimum, which specific acts of obstruction and/or concealment he is alleged to have performed, and which "potential witnesses" he is alleged to have attempted to influence. For example, it is clear that, in order to violate the federal omnibus obstruction of justice statute, 18 U.S.C. § 1503, an accuser must prove that there was a pending judicial proceeding, that the defendant knew of the proceeding, and that the defendant acted "corruptly" with the specific intent to obstruct or interfere with the proceeding or due administration of justice. *See, e.g., United States* v. *Bucey,* 876 F.2d 1297, 1314 (7th Cir. 1989); *United States* v. *Smith,* 729 F. Supp. 1380, 1383–84 (D.D.C. 1990). Without knowing which "potential witnesses" he is alleged to have attempted to influence, and the precise manner in which he is alleged to have attempted to obstruct justice, the President cannot prepare a defense that would address the elements of the offense with which he has been charged—that he had no intent to obstruct, that there was no pending proceeding, or that the person involved was not a potential witness.

It follows that the requisite vote of two-thirds of the Senate required by the Constitution cannot possibly be obtained if there are no specific statements *whatsoever* alleged to be perjurious, false or misleading in Article I or no specific acts of obstruction alleged in Article II. Different Senators might decide that different statements or different acts were unlawful without any concurrence by two-thirds of the Senate as to any particular statement or act. Such a scenario is antithetical to the Constitution's due process guarantee of notice of specific and definite charges and it threatens conviction upon vague and uncertain grounds. As currently framed, neither Article I nor Article II provides a sufficient basis for the President to prepare a defense to the unspecified charges upon which the Senate may vote, or an adequate basis for actual adjudication.

D. THE SENATE'S JUDGMENT WILL BE FINAL AND THAT JUDGMENT MUST SPEAK CLEARLY AND INTELLIGIBLY

An American impeachment trial is not a parliamentary inquiry into fitness for office. It is not a vote of no confidence. It is not a mechanism whereby a legislative majority may oust a President from a rival party on political grounds. To the contrary, because the President has a limited term of office and can be turned out in the course of ordinary electoral processes, a Presidential impeachment trial is a constitutional measure of last resort designed to protect the Republic.

This Senate is therefore vested with an extremely grave Constitutional task: a decision whether to remove the President for the protection of the people themselves.

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fails to distinguish allegedly criminal conduct from purely lawful conduct. As one court explained,

"It is to be observed that * * * it is not sufficient to constitute the offense that the oath shall be merely false, but that it must be false in some 'material matter.' Applying that definition to the facts stated in either count of this indictment, and it would seem that there is an entire lack in any essential sense to disclose that the particulars as to which the oath is alleged to have been false were material in the essential sense required for purposes of an indictment for this offense." (*United States* v. *Cameron,* 282 F. 684, 692 (D. Ariz. 1922).).

In the Senate's hands there rests not only the fate of one man, but the integrity of our Constitution and our democratic process.

Fidelity to the Constitution and fidelity to the electorate must converge in the impeachment trial vote. If the Senate is to give meaning to the Constitution's command, any vote on removal must be a vote on one or more specifically and separately identified "high Crimes and Misdemeanors," as set forth in properly drafted impeachment articles approved by the House. If the people are to have their twice-elected President removed by an act of the Senate, that act must be intelligible. It must be explainable and justifiable to the people who first chose the President and then chose him again. The Senate must ensure that it has satisfied the Constitution's requirement of a genuine two-thirds concurrence that specific, identified wrongdoing has been proven. The Senate must also assure the people, through the sole collective act the Senate is required to take, that its decision has a readily discernible and unequivocal meaning.

As matters stand, the Senate will vote on two highly complex Articles of Impeachment. Its vote will not be shaped by narrowing instructions. Its rules preclude a vote on divisible parts of the articles. There will be no judicial review, no correction of error, and no possibility of retrial. The Senate's decision will be as conclusive as any known to our law—judicially, politically, historically, and most literally, irrevocable.

Under such circumstances, the Senate's judgment must speak clearly and intelligibly. That cannot happen if the Senate votes for conviction on these articles. Their compound structure and lack of specificity make genuine agreement as to specific wrongs impossible, and those factors completely prevent the electorate from understanding why the Senate as a whole voted as it did. As formulated, these articles satisfy neither the plain requirement of the Constitution nor the rightful expectations of the American people. The articles cannot support a constitutionally sound vote for conviction.

VII. The Need for Discovery

The Senate need not address the issue of discovery at this time, but because the issue may arise at a later date, it is appropriate to remark here on its present status. Senate Resolution 16 provides that the record for purposes of the presentation by the House Managers and the President is the public record established in the House of Representatives.[136] Since this record was created by the House itself and is ostensibly the basis for the House's impeachment vote, and because this evidence has been publicly identified and available for scrutiny, comment, and rebuttal, it is both logical and fair that this be the basis for any action by the Senate. Moreover, Senate Resolution 16 explicitly prohibits the President and the House Managers from filing at this time any "motions to subpoena witnesses or to present any evidence not in the record."

In the event, however, that the Senate should later decide, pursuant to the provisions of Senate Resolution 16, to allow the House Managers to expand the record in some way, our position should be absolutely clear. At such time, the President would have an urgent need for the discovery of relevant evidence, because at no point in these proceedings has he been able to subpoena documents or summon and cross-examine witnesses. He would need to use the compulsory process authorized by Senate Impeachment Rules V and VI[137] to obtain documentary evidence and wit-

[136] S. Res. 16 defined the record for the presentations as "those publicly available materials that have been submitted to or produced by the House Judiciary Committee, including transcripts of public hearings or mark-ups and any materials printed by the House of Representatives or House Judiciary Committee pursuant to House Resolutions 525 and 581."

[137] Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials (Senate Manual 99–2, as revised by S. Res. 479 (Aug. 16, 1986)). There is ample precedent for liberal discovery in Senate impeachment trials. For example, in the trial of Judge Alcee Hastings, the Senate issued numerous orders addressing a range of pretrial issues over several months including:

- requiring the parties to provide witness lists along with a description of the general nature of the testimony that was expected from each witness months in advance of the scheduled evidentiary hearing;
- requiring the House Managers to turn over exculpatory materials, certain prior statements of witnesses, and documents and other tangible evidence they intended to introduce into evidence;
- requiring the production from the House Managers of other documents in the interest of allowing the Senate to develop "a record that fully illuminates the matters that it must consider in rendering a judgment;"
- setting a briefing schedule for stipulations of facts and documents;

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ness depositions. While the President has access to some of the grand jury transcripts and FBI interview memoranda of witnesses called by the OIC, the President's own lawyers were not entitled to be present when these witnesses were examined. The grand jury has historically been the engine of the prosecution, and it was used in that fashion in this case. The OIC sought discovery of evidence with the single goal of documenting facts that it believed were prejudicial to the President. It did not examine witnesses with a view toward establishing there was no justification for impeachment; it did not follow up obvious leads when they might result in evidence helpful to the President; and it did not seek out and document exculpatory evidence. It did not undertake to disclose exculpatory information it might have identified.

Nor did the House of Representatives afford the President any discovery mechanisms to secure evidence that might be helpful in his defense. Indeed, the House called no fact witnesses at all, and at the few depositions it conducted, counsel for the President were excluded. Moreover, the House made available only a selected portion of the evidence it received from the OIC. While it published five volumes of the OIC materials (two volumes of appendices and three volumes of supplements), it withheld a great amount of evidence, and it denied counsel for the President access to this material. It is unclear what the criterion was for selecting evidence to include in the published volumes, but there does not appear to have been an attempt to include all evidence that may have been relevant to the President's defense. The President has not had access to a great deal of evidence in the possession of (for example) the House of Representatives and the OIC which may be exculpatory or relevant to the credibility of witnesses on whom the OIC and the House Managers rely.

Should the Senate decide to authorize the House Managers to call witnesses or expand the record, the President would be faced with a critical need for the discovery of evidence useful to his defense—evidence which would routinely be available to any civil litigant involved in a garden-variety automobile accident case. The House Managers have had in their possession or had access at the OIC to significant amounts of non-public evidence, and they have frequently stated their intention to make use of such evidence. Obviously, in order to defend against such tactics, counsel for the President are entitled to discovery and a fair opportunity to test the veracity and reliability of this "evidence," using compulsory process as necessary to obtain testimony and documents. Trial by surprise obviously has no place in the Senate of the United States where the issues in the balance is the removal of the one political leader who, with the Vice-President, is elected by all the citizens of this country.[138]

The need for discovery does not turn on the number of witnesses the House Managers may be authorized to depose.[139] If the House Managers call a single witness, that will initiate a process that leaves the President potentially unprepared and unable to defend adequately without proper discovery. The sequence of discovery is critical. The President *first* needs to obtain and review relevant documentary evidence not now in his possession. He *then* needs to be able to depose potentially helpful witnesses, whose identity may only emerge from the documents and from the depositions themselves. Obviously, he also needs to depose potential witnesses identified by the House Managers. Only at *that* point will the President be able intelligently to designate his own trial witnesses. This is both a logical procedure and one which is the product of long experience designed to maximize the search for

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- setting a number of pretrial conferences;
- designating a date for final pretrial statements; and
- permitting a number of pre-trial depositions.
- Report of the Senate Impeachment Trial Committee on the Articles of Impeachment Against Judge Alcee L. Hastings, Hearings Before the Senate Impeachment Trial Committee, 101st Cong. 1st Sess. at 281, 286–87, 342–43, 606–07, 740.

The need for discovery in this case is in fact greater than in prior impeachment proceedings. In all other impeachment trials, there were either substantive investigations by the House or prior judicial proceedings in which the accused had a full opportunity to develop the evidentiary record and cross-examine witnesses. *See Id.* at 163–64 (pretrial memorandum of Judge Hastings).

[138] In another context, the Supreme Court has observed that "the ends of justice will best be served by a system of liberal discovery which gives both parties the maximum possible amount of information from which to prepare their cases and thereby reduces the possibility of surprise at trial." *Wardius* v. *Oregon,* 412 U.S. 470, 473 (1973).

[139] It is not sufficient that counsel for the President have the right to depose the witnesses called by the Managers, essential as that right is. The testimony of a single witness may have to be refuted indirectly, circumstantially, or by a number of witnesses; it is often necessary to depose several witnesses in order to identify the one or two best.

truth and minimize unfair surprise. There is no conceivable reason it should not be followed here—if the evidentiary record is opened.

Indeed, it is simply impossible to ascertain how a witness designated by the House Managers could fairly be rebutted without a full examination of the available evidence. It is also the case that many sorts of helpful evidence and testimony emerge in the discovery process that may at first blush appear irrelevant or tangential. In any event, the normal adversarial process is the best guarantor of the truth. The President needs discovery here not simply to obtain evidence to present a trial but also in order to make an informed judgment about what to introduce in response to the Managers' expanded case. The President's counsel must be able to make a properly knowledgeable decision about what evidence may be relevant and helpful to the President's defense, both in cross-examination and during the President's own case.

The consequences of an impeachment trial are immeasurably grave: The removal of a twice-elected President. Particularly given what is at stake, fundamental fairness dictates that the President be given at least the same right as an ordinary litigant to obtain evidence necessary for his defense, particularly when a great deal of that evidence is presently in the hands of his accusers, the OIC and the House Managers. The Senate has wisely elected to proceed on the public record established by the House of Representatives, and this provides a wholly adequate basis for Senate decision-making. In the event the Senate should choose to expand this record, affording the President adequate discovery is absolutely essential.

VIII. CONCLUSION

As the Senate considers these Articles of Impeachment and listens to the arguments, individual Senators are standing in the place of the Framers of the Constitution, who prayed that the power of impeachment and removal of a President would be invoked only in the gravest of circumstances, when the stability of our system of government hung in the balance—to protect the Republic itself from efforts to subvert our Constitutional system.

The Senate has an obligation to turn away an unwise and unwarranted misuse of the awesome power of impeachment. If the Senate removes this President for a wrongful relationship he hoped to keep private, for what will the House ask the Senate to remove the next President, and the next? Our Framers wisely gave us a constitutional system of checks and balances, with three co-equal branches. Removing this President on these facts would substantially alter the delicate constitutional balance, and move us closer to a quasi-parliamentary system, in which the President is elected to office by the choice of people, but continues in office only at the pleasure of Congress.

In weighing the evidence and assessing the facts, we ask that Senators consider not only the intent of the Framers but also the will and interests of the people. It is the citizens of these United States who will be affected by and stand in judgment of this process. It is not simply the President—but the vote the American people rendered in schools, church halls and other civic centers all across the land twenty-six months ago—that is hanging in the balance.

Respectfully submitted.

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January 13, 1999.

[In the Senate of the United States Sitting as a Court of Impeachment]

In re Impeachment of President William Jefferson Clinton

REPLICATION OF THE HOUSE OF REPRESENTATIVES TO THE ANSWER OF PRESIDENT WILLIAM JEFFERSON CLINTON TO THE ARTICLES OF IMPEACHMENT

The House of Representatives, through its Managers and counsel, replies to the Answer of President William Jefferson Clinton to the Articles of Impeachment ("Answer"), as follows:

PREAMBLE

The House of Representatives denies each and every material allegation in the Preamble to the Answer, including the sections entitled "The Charges in the Articles Do Not Constitute High Crimes or Misdemeanors" and "The President Did Not Commit Perjury or Obstruct Justice." With respect to the allegations in the Preamble, the House of Representatives further states that each and every allegation in Articles I and II is true and that Articles I and II properly state impeachable offenses, are not subject to a motion to dismiss, and should be considered and adjudicated by the Senate sitting as a Court of Impeachment.

ARTICLE I

The House of Representatives denies each and every allegation in the Answer to Article I that denies the acts, knowledge, intent, or wrongful conduct charged against President William Jefferson Clinton. With respect to the allegations in the Answer to Article I, the House of Representatives further states that each and every allegation in Article I is true and that Article I properly states an impeachable offense, is not subject to a motion to dismiss, and should be considered and adjudicated by the Senate sitting as a Court of Impeachment.

FIRST AFFIRMATIVE DEFENSE TO ARTICLE I

The House of Representatives denies each and every material allegation in this purported defense. The House of Representatives further states that Article I properly states an impeachable offense, is not subject to a motion to dismiss, and should be considered and adjudicated by the Senate sitting as a Court of Impeachment. The House of Representatives further states that the offense stated in Article I warrants the conviction, removal from office, and disqualification from holding further office of President William Jefferson Clinton.

SECOND AFFIRMATIVE DEFENSE TO ARTICLE I

The House of Representatives denies each and every material allegation in this purported defense. The House of Representatives further states that Article I properly states an impeachable offense, is not subject to a motion to dismiss, and should be considered and adjudicated by the Senate sitting as a Court of Impeachment. The House of Representatives further states that Article I is not unconstitutionally vague, and it provides President William Jefferson Clinton adequate notice of the offense charged against him.

THIRD AFFIRMATIVE DEFENSE TO ARTICLE I

The House of Representatives denies each and every material allegation in this purported defense. The House of Representatives further states that Article I properly states an impeachable offense, is not subject to a motion to dismiss, and should be considered and adjudicated by the Senate sitting as a Court of Impeachment. The House of Representatives further states that Article I does not charge multiple offenses in one article.

ARTICLE II

The House of Representatives denies each and every allegation in the Answer to Article II that denies the acts, knowledge, intent, or wrongful conduct charged against President William Jefferson Clinton. With respect to the allegations in the Answer to Article II, the House of Representatives further states that each and every allegation in Article II is true and that Article II properly states an impeach-

able offense, is not subject to a motion to dismiss, and should be considered and adjudicated by the Senate sitting as a Court of Impeachment.

FIRST AFFIRMATIVE DEFENSE TO ARTICLE II

The House of Representatives denies each and every material allegation in this purported defense. The House of Representatives further states that Article II properly states an impeachable offense, is not subject to a motion to dismiss, and should be considered and adjudicated by the Senate sitting as a Court of Impeachment. The House of Representatives further states that the offense stated in Article II warrants the conviction, removal from office, and disqualification from holding further office of President William Jefferson Clinton.

SECOND AFFIRMATIVE DEFENSE TO ARTICLE II

The House of Representatives denies each and every material allegation in this purported defense. The House of Representatives further states that Article II properly states an impeachable offense, is not subject to a motion to dismiss, and should be considered and adjudicated by the Senate sitting as a Court of Impeachment. The House of Representatives further states that Article II is not unconstitutionally vague, and it provides President William Jefferson Clinton adequate notice of the offense charged against him.

THIRD AFFIRMATIVE DEFENSE TO ARTICLE II

The House of Representatives denies each and every material allegation in this purported defense. The House of Representatives further states that Article II properly states an impeachable offense, is not subject to a motion to dismiss, and should be considered and adjudicated by the Senate sitting as a Court of Impeachment. The House of Representatives further states that Article II does not charge multiple offenses in one article.

CONCLUSION OF THE HOUSE OF REPRESENTATIVES

The House of Representatives further states that it denies each and every material allegation of the Answer not specifically admitted in this Replication. By providing this Replication to the Answer, the House of Representatives waives none of its rights in this proceeding. Wherefore, the House of Representatives states that both of the Articles of Impeachment warrant the conviction, removal from office, and disqualification from holding further office of President William Jefferson Clinton. Both of the Articles should be considered and adjudicated by the Senate.

Respectfully submitted,

The United States House of Representatives.

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[In the Senate of the United States Sitting as a Court of Impeachment]

In re Impeachment of President William Jefferson Clinton

REPLY OF THE UNITED STATES HOUSE OF REPRESENTATIVES TO THE TRIAL MEMORANDUM OF PRESIDENT WILLIAM JEFFERSON CLINTON

I. INTRODUCTION

The President's Trial Memorandum contains numerous factual inaccuracies and misstatements of the governing law and the Senate's precedents. These errors have largely been addressed in the Trial Memorandum of the House of Representatives filed with the Senate on January 11, 1999, and given the 24-hour period to file this reply, the House cannot possibly address them all here. The House of Representatives will address them further in its oral presentation to the Senate, and it reserves the right to address these matters further in the briefing of any relevant motions. However, President Clinton has raised some new issues in his Trial Memorandum, and the House of Representatives hereby replies to those issues.

II. FACTS

The President's Trial Memorandum outlines what he claims are facts showing that he did not commit perjury before the grand jury and did not obstruct justice. The factual issues President Clinton raises are addressed in detail in the Trial Memorandum of the House.

A complete and impartial review of the evidence reveals that the President did in fact commit perjury before the grand jury and that he obstructed justice during the *Jones* litigation and the grand jury investigation as alleged in the articles of impeachment passed by the House of Representatives. The House believes a review of the complete record, including the full grand jury and deposition testimony of the key witnesses in this case, will establish that.

The evidence which President Clinton claims demonstrates that he did not commit the offenses outlined in the Articles of Impeachment are cited in Sections IV and V of his Memorandum. Regarding Article I, President Clinton maintains that his testimony before the grand jury was entirely truthful. At the outset of his argument, he states that he told the truth about the nature and details of his relationship with Ms. Lewinsky, and he insists that any false impressions that his deposition testimony might have created were remedied by his admission of "improper intimate contact" with Ms. Lewinsky. However, his subsequent testimony demonstrates that this admission is narrowly tailored to mean that Ms. Lewinsky had "sexual relations" with him, but he did not have "sexual relations" with her, as he understood the term to be defined. In other words, he admitted only what he knew could be conclusively established through scientific tests. He denied what the testimony of Ms. Lewinsky, the testimony of a number of her confidantes, and common sense proves: that while she engaged in sexual relations with him, he engaged in sexual relations with her, regardless of how President Clinton attempts to redefine the term.

Following this pattern, President Clinton discounts substantial evidence as well as common sense when he maintains that he testified truthfully in the grand jury about, among other things, his prior deposition testimony, his attorney's statements to Judge Wright during his deposition, and his intent in providing a series of false statements to his secretary after his deposition. Again, a complete review of the record and witness testimony reveals that President Clinton committed perjury numerous times in his grand jury testimony.

In regard to Article II, President Clinton extracts numerous items of evidence from the record and analyzes them in isolation in an effort to provide innocent explanations for the substantial amount of circumstantial evidence proving his guilt. Yet when the record is viewed in its entirety, including the portions of President Clinton's deposition testimony concerning Ms. Lewinsky and his grant jury testimony, it demonstrates that President Clinton took a number of actions designed to prevent Paula Jones's attorneys, the federal district court, and a federal grand jury from learning the truth. These actions are described in detail in the Trial Memorandum of the House.

To the extent that President Clinton's Trial Memorandum raises issues of credibility, those issues are best resolved by live testimony subject to cross-examination. The Senate, weighing the evidence in its entirety, will make an independent assessment of the facts as they are presented, and a detailed, point-by-point argument of these matters is best resolved on the Senate floor. The House is confident that a

thorough factual analysis will not only refute President Clinton's contentions, but will prove the very serious charges contained in the articles.

III. THE ARTICLES PROPERLY STATE REMOVAL OFFENSES

A. THE OFFENSES ALLEGED ARE HIGH CRIMES AND MISDEMEANORS

1. The Senate Has Never Exercised Its Power To Dismiss an Article of Impeachment Except When the Official Impeached Has Resigned

The House acknowledges that the Senate has the power to dismiss an article of impeachment on the ground that it does not state a removable offense. Beyond that, however, President Clinton completely ignores the Senate's precedents concerning the use of that power. In the fifteen cases in which the House has forwarded articles of impeachment to the Senate, the Senate has *never* granted a dispositive motion to preclude a trial on the articles with one exception. In the 1926 case of Judge George English, the Senate granted a motion to adjourn after Judge English resigned from office making a trial moot on the issue of removal. *See* Impeachment of George W. English, U.S. District Judge, Eastern District of Illinois, 68 Cong. Rec. 347–48 (1926). The Senate also granted a motion to adjourn in the 1868 trial of President Andrew Johnson, but only after a full trial and votes to acquit on three articles. III Cannon's Precedents of the House of Representatives § 2443.

In addition, the Senate has *never* granted a motion to dismiss or strike an article of impeachment. However, in the 1936 case of Judge Halsted Ritter, the House managers themselves moved to strike two counts of a multi-count article to simplify the trial, and the motion was granted. 80 Cong. Rec. 4898–99 (April 3, 1936). However, the remainder of the article was fully considered, and Judge Ritter was convicted on that article. The House managers in the 1986 Judge Harry Claiborne case made the only motion for summary judgment in the history of impeachment. *Hearings of the Senate Impeachment Trial Committee (Judge Harry Claiborne)*, 99th Cong., 2d Sess. 145 (1986). They did so on the basis that Judge Claiborne had already been convicted of the charges in a criminal trial. *Id.* The Senate postponed a decision on the motion and never ruled on it, but it ultimately convicted Judge Claiborne. In short, the Senate precedents firmly establish that the Senate has always fulfilled its responsibility to give a full and fair hearing to articles of impeachment voted by the House of Representatives.

2. The Constitutional Text Sets One Clear Standard for Removal

a. There is Only One Impeachment Standard

The Constitution sets one clear standard for impeachment, conviction, and removal from office: the commission of "Treason, Bribery, or other high Crimes and Misdemeanors." U.S. Const. art. II, § 4. The Senate has repeatedly determined that perjury is a high crime and misdemeanor. Simple logic dictates that obstruction of justice which has the same effect as perjury and bribery of witnesses must also be a high crime and misdemeanor. Endless repetition of the claim that this standard is a high one does not change the standard.

President Clinton claims that to remove him on these articles would permanently disfigure and diminish the Presidency and mangle the system of checks and balances. President's Trial Memorandum at 18. Quite the contrary, however, it is President Clinton's behavior as set forth in the articles that has had these effects. Essentially, President Clinton argues that the Presidency and the system of checks and balances can only be saved if we allow the President to commit felonies with impunity. To state that proposition is to refute it. Convicting him and thereby reaffirming that criminal behavior that strikes at the heart of the justice system will result in removal will serve to strengthen the Presidency, not weaken it.

b. Impeachment and Removal Are Appropriate for High Crimes and Misdemeanors Regardless of Whether They Are Offenses Against the System of Government

President Clinton argues that impeachment may only be used to redress wrongful public misconduct. The point is academic. Perjury and obstruction of justice as set forth in the articles are, by definition, public misconduct. *See generally* House Trial Memorandum at 107–12. Indeed, it is precisely their public nature that makes them offenses—acts that are not crimes when committed outside the judicial realm become crimes when they enter that realm. Lying to one's spouse about an extramarital affair, although immoral, is not a crime. Telling the same lie under oath in a judicial proceeding is a crime. Hiding gifts given to an adulterous lover to conceal the affair, although immoral, is not a crime. When those gifts become potential evidence in a judicial proceeding, the same act becomes a crime. One who has com-

mitted these kinds of crimes that corrupt the judicial system simply is not fit to serve as the nation's chief law enforcement officer.

Apart from that, the notion that high crimes and misdemeanors encompass only public misconduct will not bear scrutiny. Numerous "private" crimes would obviously require the removal of a President. For example, if he killed his wife in a domestic dispute or molested a child, no one would seriously argue that he could not be removed. All of these acts violate the President's unique responsibility to take care that the laws be faithfully executed.

3. President Clinton Cites Precedents That Do Not Apply Rather Than Relying on the Senate's Own Precedents Clearly Establishing Perjury as a Removable Offense

a. President Clinton Continues To Misrepresent the Fraudulent Tax Return Allegation Against President Nixon

In his trial memorandum, President Clinton argues that the failure in 1974 of the House Judiciary Committee to adopt an article of impeachment against President Nixon for tax fraud supports the claim that current charges against President Clinton do not rise to the level of impeachable and removable offenses. President's Trial Memorandum at 21. The President's lawyers acknowledge the charge in the article against President Nixon of "knowingly and fraudulently failed to report certain income and claimed deductions [for 1969–72] on his Federal income tax returns which were not authorized by law." *Id.* The President's lawyers go on to state that "[t]he President had signed his returns for those years under penalty of perjury," *Id.,* trying to distinguish away the Claiborne impeachment and removal precedent from 1986, and by extension all the judicial impeachments from the 1980s which clearly establish perjury as an impeachable and removable offense.

President Clinton's argument that a President was not and should not be impeached for tax fraud because it does not involve official conduct or abuse of presidential powers simply is unfounded based on the 1974 impeachment proceedings against President Nixon. Moreover, the fact that the President and his lawyers make this argument in defense of the President is telling. He effectively claims that a large scale tax cheat could be a viable chief executive.

It is undisputed that the Judiciary Committee rejected the proposed tax fraud article against President Nixon by a vote of 26 to 12. A slim minority of Committee members stated the view that tax fraud would not be an impeachable offense. That minority view is illustrated by the comments of Rep. Waldie that in the tax fraud article there was "not an abuse of power sufficient to warrant impeachment. . . ." *Debate on Article of Impeachment 1974: Hearings of the Comm. on the Judiciary Pursuant H. Res. 803,* 93rd Cong., 2nd Sess., at 548 (1974) (Statement of Rep. Waldie). Similar views were expressed by Rep. Hogan and Rep. Mayne. Rep. Railsback took the position that there was "a serious question," *id.* at 524 (Statement of Rep. Railsback), whether misconduct of the President in connection with his taxes would be impeachable.

Other members who opposed the tax fraud article based their opposition on somewhat different grounds. Rep. Thornton based his opposition to the tax fraud article on the "view that these charges may be reached in due course in the regular process of law." *Id.* at 549 (Statement of Rep. Thornton). Rep. Butler stated his view that the tax fraud article should be rejected on prudential grounds: "Sound judgment would indicate that we not add this article to the trial burden we already have." *Id.* at 550 (Statement of Rep. Butler).

The record is clear, however, that the overwhelming majority of those who expressed a view in the debate in opposition to the tax fraud article based their opposition on the *insufficiency of the evidence,* and not on the view that tax fraud, if proven, would not be an impeachable offense.

The comments of then-Rep. Wayne Owens in the debate in 1974 directly contradict the view that Mr. Owens has expressed in recent testimony before the House Judiciary Committee. Although Mr. Owens in 1974 expressed his "belief" that President Nixon was guilty of misconduct in connection with his taxes, he clearly stated his conclusion that "on the evidence available" Mr. Nixon's offenses were not impeachable. *Id.* at 549 (Statement of Rep. Owens). Mr. Owens spoke of the need for "hard evidence" and discussed his unavailing efforts to obtain additional evidence that would tie "the President to the fraudulent deed" or that would otherwise "close the inferential gap that has to be closed in order to charge the President." *Id.* He concluded his comments in the 1974 debate by urging the members of the Committee "to reject this article . . . based on that lack of evidence." *Id.*

In addition to Mr. Owens, eleven members of the Committee stated the view that there was not sufficient evidence of tax fraud to support the article against President Nixon. *Wiggins:* "fraud . . . is wholly unsupported in the evidence." *Id.* at 524

(Statement of Rep. Wiggins). *McClory:* "no substantial evidence of any tax fraud." *Id.* at 531 (Statement of Rep. McClory). *Sandman:* "There was absolutely no intent to defraud here." *Id.* at 532 (Statement of Rep. Sandman). *Lott:* "mere mistakes or negligence by the President in filing his tax returns should clearly not be grounds for impeachment." *Id.* at 533 (Statement of Rep. Lott). *Maraziti:* discussing absence of evidence of fraud. *Id.* at 534 (Statement of Rep. Maraziti). *Dennis:* "no fraud has been found." *Id.* at 538 (Statement of Rep. Dennis). *Cohen:* questioning whether "in fact there was criminal fraud involved." *Id.* at 548 (Statement of Rep. Cohen). *Hungate:* "I think there is a case here but in my judgment I am having trouble deciding if it has as yet been made." *Id.* at 553 (statement of Rep. Hungate). *Latta:* only "bad judgment and gross negligence." *Id.* at 554 (Statement of Rep. Latta). *Fish:* "There is not to be found before us evidence that the President acted wilfully to evade his taxes." *Id.* at 556 (Statement of Rep. Fish). *Moorhead:* "there is no showing that President Nixon in any way engaged in any fraud." *Id.* at 557 (Statement of Rep. Moorhead).

The group of those who found the evidence insufficient included moderate Democrats like Rep. Hungate and Rep. Owens, as well as Republicans like Rep. Fish, Rep. Cohen, and Rep. McClory, all of whom supported the impeachment of President Nixon.

In light of all these facts, it is not credible to assert that the House Judiciary Committee in 1974 determined that tax fraud by the President would not be an impeachable offense. The failure of the Committee to adopt the tax fraud article against President Nixon simply does not support the claim of President Clinton's lawyers that the offenses charged against him do not rise to the level of impeachable offenses.

In the Committee debate in 1974 a compelling case was made that tax fraud by a President—if proven by sufficient evidence—would be an impeachable offense. Rep. Brooks, who later served as chairman of the Committee, said:

"No man in America can be above the law. It is our duty to establish now that evidence of specific statutory crimes and constitutional violations by the President of the United States will subject all Presidents now and in the future to impeachment.

* * * * * * *

"No President is exempt under our U.S. Constitution and the laws of the United States from accountability for personal misdeeds any more than he is for official misdeeds. And I think that we on this Committee in our effort to fairly evaluate the President's activities must show the American people that all men are treated equally under the law."

(Debate on Articles of Impeachment, 1974: Hearings of the Comm. on the Judiciary Pursuant to H. Res. 803, 93rd Cong., 2nd Sess., at 525, 554.)

Professor Charles Black stated it succinctly: "A large-scale tax cheat is not a viable chief magistrate." Charles Black, *Impeachment: A Handbook,* (Yale University Press, 1974) at 42. What is true of tax fraud is also true of a persistent pattern of perjury by the President. An incorrigible perjurer is not a viable chief magistrate.

b. President Clinton Continues to Misrepresent The Allegations Against Alexander Hamilton

President Clinton continues to try to persuade the American public that the House of Representatives has impeached him for having an extramarital affair. *See Answer of President William Jefferson Clinton to the Articles of Impeachment* at 1 ("The charges in the two Articles of Impeachment do not permit the conviction and removal from office of a duly elected President. *The President has acknowledged conduct with Ms. Lewinsky that was improper.*") (emphasis added). In doing so, the President's lawyers refer to an incident involving then Secretary of the Treasury Alexander Hamilton being blackmailed by the husband of a woman named Maria Reynolds with whom he was having an adulterous affair. However, the President's lawyers omit the relevant distinguishing facts even as they cast aspersions upon Alexander Hamilton: none of Hamilton's "efforts" to cover up his affair involved the violation of any laws, let alone felonies. Indeed, the fact of the matter is that Hamilton was the victim of the crime of extortion.

Never did Hamilton raise his right hand to take a sacred oath and then willfully betray that oath and the rule of law to commit perjury. Never did Alexander Hamilton obstruct justice by tampering with witnesses, urging potential witnesses to sign false affidavits, or attempt to conceal evidence from a Federal criminal grand jury.

Again, the significance of the distinctions are glaringly obvious: it is apparent from the Hamilton case that the Framers did not regard private sexual misconduct as an impeachable offense. It is also apparent that efforts to cover up such private behavior outside of a legal setting, including even paying hush money to induce someone to destroy documents, did not meet the standard. Neither Hamilton's high position, nor the fact that his payments to a securities swindler created an enormous appearance problem, were enough to implicate the standard. These wrongs were real, and they were not insubstantial, but to the Framers they were essentially private and therefore not impeachable. David Frum, "Smearing Alexander Hamilton," *The Weekly Standard* (Oct. 19, 1998) at 14.

But the Alexander Hamilton incident President Clinton cites actually clarifies the precise point at which personal misconduct becomes a public offense. Hamilton could keep his secret only by a betrayal of public responsibilities. Hamilton came to that point and, at immense personal cost, refused to cross the line. President Clinton came to that point and, fully understanding what he was doing, knowingly charged across the line. President Clinton's public acts of perjury and obstruction of justice transformed a personal misconduct into a public offense.

4. The Views of the Prominent Historians and Legal Scholars the President Cites Do Not Stand Up to Careful Scrutiny

It speaks volumes that the most distinguished of the 400 historians referred to in President Clinton's trial brief is Arthur Schlesinger, Jr. Professor Schlesinger had a different view of impeachment 25 years ago. President Clinton himself asserts that "the allegations are so far removed from official wrongdoing that their assertion here threatens to weaken significantly the Presidency itself." President's Trial Memorandum at 24. However, Schlesinger has written that:

> "The genius of impeachment lay in the fact that it could punish the man without [ ] punishing the office. For, in the Presidency as elsewhere, power was ambiguous: the power to [do] good meant also the power to do harm, the power to serve the republic also the power to demand and defile it."

(Arthur Schlesinger, Jr., *The Imperial Presidency,* (Easton Press edit. 1973) (hereinafter "Schlesinger") at 415.)

The statement of the 400 historians cited with approval in the President's trial memorandum makes the following statement: "[t]he Framers explicitly reserved that step for high crimes and misdemeanors in the exercise of executive power." Statement of Historians in Defense of the Constitution, *The New York Times* (Oct. 30, 1998) at A15. The 400 historians then believe that commission of a murder or rape by the President of the United States in his personal capacity is not subject to the impeachment power of Article II, Section 4.

President Clinton in his trial memorandum asserts that this case does not fit the paradigmatic case for impeachment. President's Trial Memorandum at 24. However, none of his predecessors ever faced overwhelming evidence of repeatedly lying under oath before a federal court and grand jury and otherwise seeking to obstruct justice to benefit himself—directly contradicting his oath to "take care that the laws are faithfully executed." But as former Attorney General Griffin Bell, who served under President Carter, said before the House Judiciary Committee recently, "[a] President cannot faithfully execute the laws if he himself is breaking them." *Background and History of Impeachment: Hearings Before the Subcomm. on the Constitution of the House Comm. on the Judiciary,* 105th Cong., 2d Sess. at 203 (Comm. Print 1998) (Testimony of Judge Griffin B. Bell).

President Clinton goes on to state that to make the offenses alleged against him impeachable and removable conduct "would forever lower the bar in a way inimical to the Presidency and to our government of separated powers. These articles allege (1) sexual misbehavior, (2) statements about sexual misbehavior and (3) attempts to conceal the fact of sexual misbehavior." President's Trial Memorandum at 26. While President Clinton and his able counsel would like to define the case this way, what is at issue in the articles of impeachment before the Senate is clear: perjury and obstruction of justice committed by the President of the United States in order to thwart a duly instituted civil rights sexual harassment lawsuit against him as well as a subsequent grand jury investigation. While the President may think such allegations would forever lower the bar in terms of the conduct we expect from our public officials, we must square his opinion and that of his lawyers with the fact that his Justice Department puts people in prison for similar conduct. While the President's brief again quotes Arthur Schlesinger, Jr. for the proposition that we must not "lower the bar," President's Trial Memorandum at 26, Schlesinger held a different view during the impeachment of President Nixon:

"If the Nixon White House escaped the legal consequences of its illegal behavior, why would future Presidents and their associates not suppose themselves entitled to do what the Nixon White House had done? Only condign punishment would restore popular faith in the Presidency and deter future Presidents from illegal conduct."
(Schlesinger at 418.)

5. The President and Federal Judges are Impeached, Convicted, and Removed From Office Under the Same Standard

President Clinton's argument that Presidents are held to a lower standard of behavior than federal judges completely misreads the Constitution and the Senate's precedents. *See generally* House Trial Brief at 101–06. The Constitution provides one standard for the impeachment, conviction, and removal from office of "[t]the President, the Vice President, and all civil officers of the United States." U.S. Const. art II, § 4. It is the commission of "Treason, Bribery, or other high Crimes and Misdemeanors." *Id.* The Senate has already determined that perjury is a high crime and misdemeanor in the cases of Judge Nixon, Judge Hastings, and Judge Claiborne.

President Clinton argues that the standard differs because judges have life tenure whereas Presidents are accountable to the voters at elections. That argument fails on several grounds. The differing tenures are set forth in the Constitution, and there is simply no textual support for the idea that they affect the impeachment standard at all. If electoral accountability were a sufficient means of remedying presidential misconduct, the framers would not have explicitly included the President in the impeachment clause. Finally, even if this argument were otherwise valid, it does not apply to President Clinton because he will never face the voters again. U.S. Const. amend. XXII. Indeed, all of the conduct charged in the Articles occurred after the 1996 election.

Then President Clinton rejects the Senate's own precedents showing that perjury is a high crime and misdemeanor in the three judicial impeachments of the 1980s arguing that all of the lying involved there concerned the judges' official duties. That is true with respect to Judge Hastings, but completely false with respect to Judge Claiborne and Judge Nixon. Judge Claiborne was impeached and convicted for lying on his income tax returns, an entirely personal matter. President Clinton tries to explain this away by saying: "Once convicted, [Judge Claiborne] simply could not perform his official functions because his personal probity had been impaired such that he could not longer be an arbiter of others' oaths." President's Trial Memorandum at 29. The same is true of President Clinton. He ultimately directs the Department of Justice which must decide whether people are prosecuted for lying. If he has committed perjury and obstructed justice, how can he be the arbiter of other's oaths? As Professor Jonathan Turley put it:

"As Chief Executive the President stands as the ultimate authority over the Justice Department and the Administration's enforcement policies. It is unclear how prosecutors can legitimately threaten, let alone prosecute, citizens who have committed perjury or obstruction of justice under circumstances nearly identical to the President's. Such inherent conflict will be even greater in the military cases and the President's role as Commander-in-Chief."

(Background and History of Impeachment: Hearings Before the Subcomm. on the Constitution of the House Comm. on the Judiciary, 105th Cong., 2d Sess. at 274 (Comm. Print 1998) (Testimony of Professor Jonathan Turley).)

In the same vein, President Clinton claims that Judge Nixon "employ[ed] the power and prestige of his office to obtain advantage for a party." President's Trial Brief at 29. In fact, Judge Nixon intervened in a state criminal case in which he had no official role. His ability to persuade the prosecutor to drop the case rested on his friendship with the state prosecutor—not his official position. President Clinton argues that it was Judge Nixon's intervention in a judicial proceeding that ties it to his official position. The same is true of President Clinton. He intervened in two judicial proceedings and his actions had the same effect as Judge Nixon's—to defeat a just result.

As the person who ultimately directs the Justice Department—the federal government's prosecutorial authority—the President must follow his constitutional duty to take care that the laws are faithfully executed. U.S. Const. art II, § 3. His special constitutional duty is at least as high, if not higher, than the judge's. Indeed, President Clinton acknowledged as much early in his Administration when controversy arose about the nomination of Zoe Baird and the potential nomination of Judge Kimba Wood to be Attorney General. Questions were raised about whether they had properly complied with laws relating to their hiring of household help. At that time,

President Clinton said the Attorney General "should be held to a higher standard than other Cabinet members on matters of this kind [i.e. strictly complying with the law]." Remarks of President Clinton with Reporters Prior to a Meeting with Economic Advisers, February 8, 1993, 29 Weekly Compilation of Presidential Documents 160. If the Attorney General is held to a higher standard of compliance with the law, then her superior, President Clinton, must be also.

B. THE INDIVIDUAL CONSCIENCES OF SENATORS DETERMINES THE BURDEN OF PROOF IN IMPEACHMENT TRIALS

The Constitution does not discuss the standard of proof for impeachment trials. It simply states that "the Senate shall have the Power to try all Impeachments." U.S. Const., Art I, Sec. 3, clause 5. Because the Constitution is silent on the matter, it is appropriate to look at the past practice of the Senate. Historically, the Senate has never set a standard of proof for impeachment trials. "In the final analysis the question is one which historically has been answered by individual Senators guided by their own consciences." Congressional Research Service Report for Congress, Standard of Proof in Senate Impeachment Proceedings, Thomas B. Ripy, Legislative Attorney, American Law Division (January 7, 1999).

President Clinton argues that the impeachment trial is similar to a criminal trial and that the appropriate standard should therefore be "beyond a reasonable doubt." That argument is not new: it has been made in the past, and the Senate has rejected it, as indeed, President Clinton acknowledges. He asserts, however, that the impeachment trial of a President should proceed under special procedures that do not apply to the trial of other civil officers. His arguments are unpersuasive.

1. The Senate has Never Adopted the Criminal Standard of "Beyond a Reasonable Doubt" or Any Other Standard of Proof for Impeachment Trials

The Senate has never adopted the standard of "beyond a reasonable doubt" in any impeachment trial in U.S. history. In fact, the Senate has chosen not to impose a standard at all, preferring to leave to the conscience of each senator the decision of how best to judge the facts presented.

In the impeachment trial of Judge Harry Claiborne, counsel for the respondent moved to designate "beyond a reasonable doubt" as the standard of proof for conviction. Gray & Reams, The Congressional Impeachment Process and the Judiciary: Documents and Materials on the Removal of Federal District Judge Harry E. Claiborne, Volume 5, Document 41, X (1987). The Senate overwhelmingly rejected the motion by a vote of 17–75. In the floor debate on the motion, House Manager Kastenmeier emphasized that the Senate has historically allowed each member to exercise his personal judgment in these cases. 132 Cong. Rec. S15489–S15490 (daily ed. October 7, 1986).

The question of the appropriate standard of proof was also raised in the trial of Judge Alcee Hastings. In the Senate Impeachment Trial Committee, Senator Rudman said in response to a question about the historical practice regarding the standard of proof that there has been no specific standard, "you are not going to find it. It is what is in the mind of every Senator. . . . I think it is what everybody decides for themselves." *Report of the Senate Impeachment Trial Committee on the Articles Against Judge Alcee Hastings: Hearings before the Senate Impeachment Trial Committee* (Part 1) 101st Cong., 1st Sess. 73–75, (discussion involving Senator Lieberman and Senator Rudman).

2. The Criminal Standard of Proof is Inappropriate for Impeachment Trials

President Clinton argues that an impeachment trial is akin to a criminal trial and that, therefore, the criminal standard should apply. That assertion is, of course, at direct odds with his apparent opposition to the presentation of evidence through witnesses, another normal criminal trial procedure. The Senate Rules Committee rejected this analogy in 1974, stating, "an impeachment trial is not a criminal trial," and advocating a clear and convincing evidence standard. Executive Session Hearings, U.S. Senate Committee on Rules and Administration, "Senate Rules and Precedents Applicable to Impeachment Trials" 93rd Cong., 2d Sess. (August 5–6, 1974). Indeed, it is undisputed that impeachable offenses need not be criminal offenses. *See Submission by Counsel for President Clinton to the Committee on the Judiciary of the United States House of Representatives,* 105th Cong., 2d Sess. at 14 (Comm. Print Ser. No. 16 1998) ("Impeachable acts need not be criminal acts.")

Moreover, the result of conviction in an impeachment trial is removal from office, not punishment. As the House argued in the Claiborne trial, the reasonable standard was designed to protect criminal defendants who risked "forfeitures of life, liberty and property" (quoting *Brinegar* v. *United States*, 338 U.S. 160, 174 (1949)). This standard is inappropriate here because the Constitution limits the con-

sequences of a Senate impeachment trial to removal from office and disqualification from holding office in the future, explicitly preserving the option for a subsequent criminal trial in the courts. U.S. Const. art. II, § 3, cl. 6.

In addition, as the House argued in the Claiborne trial, the criminal standard is inappropriate because impeachment is, by its nature, a proceeding where the public interest weighs more heavily than the interest of the individual defendant. Gray & Reams, The Congressional Impeachment Process and the Judiciary: Documents and Materials on the Removal of Federal District Judge Harry E. Claiborne, Volume 5, Document 41, X (1987). During the course of the floor debate on this motion in the Claiborne trial, Representative Kastenmeier argued for the House that the use of the criminal standard was inappropriate where the public interest in removing corrupt officials was a significant factor. 132 Cong. Rec. S15489–S15490 (daily ed. October 7, 1986).

3. A President Who Is Impeached Should Not Receive Special Procedural Benefits That Do Not Apply in the Impeachment Trials of Other Civil Officers

President Clinton argues that he should be exempted from the weight of historical practice and precedent and be given a special rule on the standard of proof. This argument is based on fallacious assertions, the first of which is that different constitutional standards apply to the impeachment of judges and presidents. See above at 14–16 and House Trial Memorandum at 101–06.

President Clinton also employs inflammatory rhetoric to suggest that a presidential impeachment trial ought to be treated differently, explaining that the criminal standard is needed because "the Presidency itself is at stake" and because conviction would "overturn the results of an election." President's Trial Memorandum at 32–33. The presidency is, of course, not at stake, though the tenure of its current office holder may be. The 25th Amendment to the Constitution ensures that impeachment and removal of a President would not overturn an election because it is the elected Vice President who would replace the President not the losing presidential candidate.

Finally, President Clinton argues that the evidence should be tested by the most stringent standard because "there is no suggestion of corruption or misuse of office—or any other conduct that places our system of government at risk in the two remaining years of the President's term." President's Trial Memorandum at 33. While the President might be expected to argue that he did not act corruptly, he cannot credibly assert that "there is no suggestion of corruption," because "corrupt" conduct is precisely what he is charged with in the articles of impeachment. Though not persuasive as an argument, this statement is significant in what it *concedes*—that corruption is among the "conduct that places our system of government at risk." President's Trial Memorandum at 33. Having acknowledged this, President Clinton cannot be heard to complain that the House has failed to charge him with conduct which rises to the level of an impeachable offense.

IV. The Structure of the Articles is Proper and Sufficient

A. The Articles are Not Unconstitutionally Vague

President Clinton's trial memorandum argues that the two articles of impeachment are unfairly complex. To the contrary, the articles present the misdeeds of President Clinton and their consequences in as transparent and understandable a manner as possible.

The first article of impeachment charges that President Clinton violated his enumerated constitutional responsibilities by willfully corrupting and manipulating the judicial process. He did this by providing perjurious, false and misleading testimony to a grand jury in regard to one or more of four matters. The deleterious consequences his actions had for the people of the United States are then described. The second article charges that President Clinton violated his enumerated constitutional responsibilities by a course of conduct that prevented, obstructed, and impeded the administration of justice. One or more of seven listed acts constitute the particulars of President Clinton's course of conduct. As in the first article, the deleterious consequences his actions had for the people of the United States are then described.

To do as President Clinton requests would require separating out into a unique article of impeachment each possible combination of (a) a particular violation of his duties, (b) a particular wrongful act, and (c) a particular consequence of his actions. This would require 48 different articles in the case of the first article and 84 in the case of the second. Such a multiplicity of articles is not required and would assist no one. Of course, if the president had violated fewer presidential duties, committed

fewer misdeeds, and been responsible for fewer harmful consequences to the American people, the articles could have been drafted more simply.

The trial memorandum then makes the contention that the two articles of impeachment are impermissibly vague and lacking in specificity in that they do not meet the standards of a criminal indictment. This contention clearly misses the mark. Impeachment is a political and not a criminal proceeding, designed, as recognized by Justice Joseph Story, the Constitution's greatest nineteenth century interpreter, "not . . . to punish an offender" by threatening deprivation of his life or liberty, but to "secure the state" by "divest[ing] him of his political capacity". J. Story, *Commentaries on the Constitution* (R. Rotunda & J. Nowak eds., 1987) § 803. Justice Story thus found the analogy to an indictment to be invalid:

> "The articles . . . need not, and indeed do not, pursue the strict form and accuracy of an indictment. They are sometimes quite general in the form of the allegations; but always contain, or ought to contain, so much certainty, as to enable the party to put himself upon the proper defense, and also, in case of an acquittal, to avail himself of it, as a bar to another impeachment."

(*Id.* at § 806).

In explaining the impeachment process to the citizens of New York in Federalist No. 65, Alexander Hamilton stated in more general terms that impeachment "can never be tied down by such strict rules, either in the delineation of the offense by the prosecutors or in the construction of it by the judges, as in common cases serve to limit the discretion of courts in favor of personal security." *The Federalist No. 65*, at 398 (Clinton Rossiter ed., 1961).

Can the president legitimately argue that he is unable to put on a proper defense? President Clinton has committed a great number of impeachable misdeeds. The House Judiciary Committee's committee report requires 20 pages just to list the most glaring instances of the president's perjurious, false, and misleading testimony before a federal grand jury and it requires 13 pages just to list the most glaring incidents in the president's course of conduct designed to prevent, obstruct, and impede the administration of justice. The House believes that President Clinton's attorneys have reviewed the committee report. They know exactly what he is being charged with, as is acknowledged in the president's trial memorandum. The memorandum states in its introduction that "[t]ake away the elaborate trappings of the Articles and the high-flying rhetoric that accompanied them, and we see clearly that the House of Representatives asks the Senate to remove the President from office because he . . ." President's Trial Memorandum at 2. In addition, in the House proceedings, the President filed three documents: a Preliminary Memorandum, an Initial Response, and a Submission by Counsel. The first two documents were printed together and ran to 57 pages. *Preliminary Memorandum of the President of the United States Concerning Referral of the Office of the Independent Counsel and Initial Response of the President of the United States to Referral of the Office of the Independent Counsel*, 105th Cong., 2d Sess., H.Doc. No. 105–317 (1998). The third was printed and ran to 404 pages. *Submission by Counsel for President Clinton to the Committee on the Judiciary of the United States House of Representatives*, 105th Cong., 2d Sess. (Comm. Print Ser. No. 16 1998). He was also given 30 hours to present his case before the House Committee on the Judiciary, during which he called numerous witnesses. The Committee repeatedly asked President Clinton to provide it with any exculpatory evidence, an offer which he never accepted. Now President Clinton's Trial Memorandum to the Senate runs to 130 pages. Clearly, President Clinton has not suffered from any lack of specificity in the articles of impeachment.

If he had, he would have availed himself of the opportunity to file a motion for a bill of particulars. He had that opportunity on January 11, 1999, and he waived it. He should not now be heard to claim that he does not know what the charges are.

Unlike the judicial impeachments of the 1980s, President Clinton has not committed a handful of specific misdeeds that can easily be listed in separate articles of impeachment. In order to encompass the whole melange of misdeeds that caused the House of Representatives to impeach President Clinton, the Judiciary Committee looked to the only analogous case—that of President Nixon. In 1974, the Committee was also faced with drafting articles of impeachment of a reasonable length against a president who had committed a long series of improper acts designed to achieve an illicit end.

The first article of impeachment against President Nixon charged that in order to cover up an unlawful entry into the headquarters of the Democratic National Committee and to delay, impede, and obstruct the consequent investigation (and for certain other purposes), he engaged in a series of acts such as "making or causing

to be made false or misleading statements to lawfully authorized investigative officers", "endeavoring to misuse the Central Intelligence Agency", and "endeavoring to cause prospective defendants and individuals duly tried and convicted, to expect favored treatment and consideration in return for their silence or false testimony." *Impeachment of Richard M. Nixon, President of the United States,* H. Rept. No. 93–1305, 93rd Cong., 2d Sess. 2 (1974). The article did not list each false or misleading statement, did not list each misuse of the CIA, and did not list each prospective defendant and what they were promised.

In like fashion, the articles of impeachment against President Clinton charge him with providing perjurious, false, and misleading testimony concerning four subjects, such as an his relationship with a subordinate government employee, and engaging in a course of conduct designed to prevent, obstruct, and impede the administration of justice, such course including four generals acts such as an effort to secure job assistance for that employee. An argument can be made that the articles of impeachment against President Clinton were drafted with more specificity than those against President Nixon. Unless President Clinton is arguing that the Senate should have dismissed the first article of impeachment against President Nixon (had the president not resigned), he has little ground to complain about the articles against himself. In short, President Clinton knows exactly what the charges are, and the Senate should now require him to account for his behavior.

B. THE ARTICLES DO NOT IMPROPERLY CHARGE MULTIPLE OFFENSES IN ONE ARTICLE

President Clinton argues unpersuasively that the articles of impeachment are "unconstitutionally flawed" in two respects. First, he argues that "by charging multiple wrongs in one article, the House of Representatives has made it impossible for the Senate to comply with the Constitutional mandate that any conviction be by the concurrence of two-thirds of the members." President's Trial Memorandum at 101. Second, he argues that the articles do not provide him "the most basic notice of the charges against him required by due process and fundamental fairness." *Id.* Both arguments are factually deficient, ignore Senate precedent and procedure, and are constitutionally flawed.

The articles of impeachment allege that the President made "one or more" "perjurious, false and misleading statements to the grand jury" and committed "one or more" acts in which he obstructed justice. H. Res. 611, 105th Cong. 2nd Sess. (1998). The articles of impeachment are modeled after those adopted by the House Committee on the Judiciary against President Nixon and were drafted with the rules of the Senate in mind. Senate Rules specifically contemplate that the House may draft articles of impeachment in this manner and prior rulings of the Senate have held that such drafting is not deficient and will not sustain a motion to dismiss.

In 1986, the United States Senate amended the *Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials.* S. Res. 479, 99th Cong., 2nd Sess. (1986). As part of the reform, Rule XXIII, which deals generally with voting the final question, was amended to clarify the articles of impeachment are not divisible. Rule XXIII provides in relevant part that:

"An article of impeachment shall not be divisible for the purpose of voting thereon at any time during the trial. Once voting has commenced on an article of impeachment, voting shall be continued until voting has been completed on all articles of impeachment unless the Senate adjourns for period not to exceed one day or adjourns sine die."

The Senate Committee on Rules and Administration, after thoroughly reviewing the impeachment rules, prior articles of impeachments, and prior Senate trials, decided that articles of impeachment should not be divisible. In drafting the amendment to Rule XXIII providing that articles of impeachment not be divided, the Senate was aware that the House may combine multiple counts of impeachable conduct in one article of impeachment. The Committee report explains the Senate's position:

"The portion of the amendment effectively enjoining the divisions of an article into separate specifications is proposed to permit the most judicious and efficacious handling of the final question both as a general manner and, in particular, with respect to the form of the articles that proposed the impeachment of President Richard M. Nixon. The latter did not follow the more familiar pattern of embodying an impeachable offense in an individual article but, in respect to the first and second of those articles, set out broadly based charges alleging constitutional improprieties followed by a recital of transactions illustrative or supportive of such charges. The wording of Articles I and II expressly provided that a conviction could be had thereunder if supported by "one or more of the" enumerated specifications. The general review of the Committee at that time was expressed by Senators Byrd and Allen, both of

whom felt that division of the articles in question into potentially 14 separately voted specifications might "be time consuming and confusing, and a matter which could create great chaos and division, bitterness, and ill will * * *." *Accordingly, it was agreed to write into the proposed rules language which would allow each Senator to vote to convict under either the first or second articles if he were convinced that the person impeached was "guilty" or one or more of the enumerated specifications."*

Amending the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials, Report of the Comm. on Rules and Administration, S. Rept. 99–401, 99th Cong., 2nd Sess., at 8 (1986) (emphasis added). Because the Senate was aware that multiple specifications of impeachment conduct may be contained in an article of impeachment, the Senate's rules implicitly countenance such drafting.

The issue regarding whether articles of impeachment are divisible is not new to the Senate. In fact, the Senate's Committee on Rules and Administration reviewed the Senate's impeachment procedures in 1974 to prepare for a possible trial of President Richard Nixon. The Committee passed the exact same language as the Committee did in 1986 prohibiting the division of an article of impeachment. Because President Nixon resigned, the full Senate never considered the amendments.

Senator Jacob K. Javits of New York submitted a statement to the Committee in 1974 addressing the divisibility issue and advised that Rule XXIII be amended to prohibit the division of an article of impeachment. His comments, as follows, are instructive:

"Rule XXIII provides for the yeas and nays to be taken on each article separately but does not set any order for a vote when there are several articles. In the [President] Johnson trial, this was done by order of the Senate and several votes were taken on the order. This procedure, setting a vote for final consideration, should be stated in the rules. Also the rule is silent about the division of any article. In the Johnson trial a division was requested and the Chief Justice attempted to devise one, but could not, and the article as a whole was submitted for a vote to the Senate. *I believe articles should not be divided because this raises a further question of whether a two-thirds vote is required on each part of an article and whether the House action on the construction of a particular article can be changed without further action by the House.* Thus the rule should provide for no division of an article by the Senate."

(Senate Rules and Precedents Applicable to Impeachment Trials, Executive Session Hearings before the Comm. on Standing Rules and Administration, 93rd Cong., 2nd Sess. at 116 (August 5th and 6th, 1974) (emphasis added).)

In addition to implicitly recognizing that articles of impeachment may contain multiple specifications of impeachable offenses, the Senate has convicted a number of judges on such "omnibus" articles, including Judges Archbald, Ritter, and Claiborne. In the case of Judge Nixon, the Senate acquitted on the article, but refused to dismiss it.

The most recent example, that of Judge Nixon in 1989, is instructive. Judge Walter L. Nixon filed a motion to dismiss on the grounds that Article III was duplicative, among other things. Senator Fowler, the chairman of the committee appointed to take evidence in the impeachment trial of Judge Nixon explained the reasons for denying Nixon's motion to refer the motion to dismiss to the full Senate:

"To the extent that the motion rests on the House's inclusion of fourteen distinct allegations of false statements in one article, we believe that Article III states an intelligible and adequately discrete charge of an impeachable offense by alleging that Judge Nixon concealed information concerning several conversations in which he had engaged by making "one or more" false statements to a grand jury. The House has substantial discretion in determining how to aggregate related alleged acts of misconduct in framing Articles of Impeachment and has historically frequently chosen to aggregate multiple factual allegations in a single impeachment article. The House's itemization of the fourteen particular statements whose knowing falsity it is alleging serves to give Judge Nixon fair notice of the contours of the charge against him without reducing the intelligibility of the article's essential accusation that Judge Nixon knowingly concealed material information from the government's law enforcement agents. Because the Committee believes that evidentiary proceedings may fairly be conducted on Article III as it is presently drafted, Judge Nixon's motion to refer his motion to dismiss Article III to the Senate at this time is denied."

(135 Cong. Rec. 19635–36 (September 6, 1989).)

The full Senate eventually rejected Judge Nixon's motion to dismiss by a vote of 34 to 63. Mr. Manager Cardin persuasively summed up the argument against the motion to dismiss as follows:

"Judge Nixon argues, in his brief, that you must find all 14 statements to be false to vote guilty on article III. But that is untrue. Read the article closely. The question posed by article III is, did Judge Nixon conceal information? Did he conceal information, first by one or more false or misleading statements in his interview, and then by one or more false and misleading statements in his grand jury testimony?

"You need not find all 14 statements to be false. The House is unanimously convinced that all 14 are complete and utter lies. We hope you will agree. But after considering the evidence, perhaps you will conclude that only 12 of the statements are false. It really does not matter. Just one intentionally false and misleading statement in the interview, or one in the grand jury, should be enough. Because if you conclude that Judge Nixon concealed information, whether by 1 false statement or 14, he should be removed from the bench. You should vote guilty on article III.

"And you need not necessarily agree on which statements are false, if you reach the conclusion that he concealed information. If two-thirds of the Senators present believe Judge Nixon lied, regardless of how each individual Senator reached that conclusion, he will properly be removed from office.

* * * * * * *

"This is by no means unfair to Judge Nixon, for even if you might differ on which particular statements are lies, the bottom line is that two-thirds of you will have agreed that he concealed information, rendering him unfit for office. That is what the Constitution requires."

(*Id.* at 26751.)

Given the clear Senate precedent permitting articles of impeachment containing multiple specifications of impeachable offenses, the President's attack on the construction of the articles is an attack on Senate rules and precedent. The President's concerns, if assumed to be valid, could be addressed simply by permitting a division of the question. Under the standing rules of the Senate, any Senator may have the same divided if "the question in debate contains several propositions." Senate Rule XV. A question is divisible if it contains two or more separate and distinct propositions. The Senate, however, has made an affirmative decision to dispense with the regular order which governs bills, resolutions, and amendments thereto, and instead adopted a different procedure not permitting the division of articles of impeachment. The Senate has not acted unconstitutionally in the past regarding prior impeachments, and is not on a course to do so in the trial of President Clinton.

The claim that President Clinton is not on notice regarding the charges is ludicrous. The Lewinsky matter is arguably the most reported and scrutinized story of 1998 and possibly of 1999. The facts of the case are contained in numerous documents, statements, reports, and filings. Specifically, President Clinton has had the following documents, among others, containing the facts and specifics of the case: (1) *Referral from Independent Counsel Kenneth W. Starr in Conformity with the Requirements of Title 28, United States Code, Section 595(c),* H.Doc. 105–310, 105th Cong., 2nd Sess. (1998); (2) *Investigatory Powers of the Comm. on the Judiciary with Respect to its Impeachment Inquiry,* H. Rept. 105–795, 105th Cong., 2nd Sess. (October 7, 1998); (3) *Impeachment of William Jefferson Clinton, President of the United States,* 105th Cong., 2nd Sess., H.R. Rept. 105–830 (Dec. 16, 1998); and (4) *Trial Memorandum of the United States House of Representatives.* If all of these reports and the thousands of pages of documents are not enough, President Clinton will have the opportunity to review the presentation of the Managers on the Part of the House for up to twenty-four hours.

V. President Clinton Completely Misstates the Record as to the Discovery Procedures That Were Available to Him in the House of Representatives

President Clinton's trial memorandum claimed to the Senate that, should it decide "to allow the House managers to expand the record in some way . . . the President would have an urgent need for the discovery of relevant evidence, *because at no point in these proceedings has been able to subpoena documents or summon or cross-examine witnesses.*" President's Trial Memorandum at 125 (emphasis added). The President also states that "the House of Representatives [did not] afford the President any discovery mechanisms to secure evidence that might be helpful in his defense." *Id.*

We will not address every discovery issue here since those issues will be resolved in the coming days; however, the Senate should know that these claims are absolutely false. In fact, the President's own brief refutes his claims. "The Committee

allowed the President's lawyers two days in which to present a defense. The White House presented four panels of distinguished expert witnesses. . . ." White House Counsel Charles F.C. Ruff presented argument to the Committee on behalf of the President. . . ." *Id.* at 13.

The House Committee on the Judiciary repeatedly asked the President's attorneys to supply any exculpatory evidence to the Committee, both orally and in writing. They never did. When, at the last minute, the President's counsel requested witnesses, the Committee invited to testify every witness they requested. Aside from this, President Clinton nor his attorneys never asked to "subpoena documents" or "summon or cross-examine witnesses." If President Clinton's argument is that the Committee did not provide his staff a stack of blank subpoenas, that is correct. However, neither the House of Representatives, nor the Senate, has the ability to "turn over" its constitutionally based subpoena power to the executive branch.

President Clinton's attorneys never asked to do the things they now claim they never had the ability to do. In fact, when minority members of the Committee publicly asked that Judge Starr be called as a witness, Judge Starr was called. In fact, President Clinton's attorney and minority counsel questioned Judge Starr for over two hours. Every Member of the Committee questioned him for at least five minutes each. Judge Starr was a witness, and he was cross-examined by David Kendall, President Clinton's private attorney. President Clinton's claims are just not accurate.

President Clinton's attorneys raise the issue of fairness. They are entitled to their own opinion about the House's proceedings, but they are not entitled to rewrite history. The truth is that the Committee's subpoena power could have been used to subpoena documents or witnesses on behalf of the President if they had so requested. They did not. All they requested, is that lawyers, law professors, and historians testify before the Committee. In short, President Clinton's statements about what happened in the House completely misstate what occurred.

VI. CONCLUSION

For the reasons stated herein and in the Trial Memorandum of the United States House of Representatives, the House respectfully submits that the articles properly state impeachable offenses, that the Senate should proceed to a full trial on the articles, and that after trial, the Senate should vote to convict President William Jefferson Clinton, remove him from office, and disqualify him from holding further office.

Respectfully submitted,

The United States
House of Representatives.

HENRY J. HYDE,
F. JAMES SENSENBRENNER, Jr.,
BILL MCCOLLUM,
GEORGE W. GEKAS,
CHARLES T. CANADY,
STEPHEN E. BUYER,
ED BRYANT,
STEVE CHABOT,
BOB BARR,
ASA HUTCHINSON,
CHRIS CANNON,
JAMES E. ROGAN,
LINDSEY O. GRAHAM,
Managers on the Part of the House.

THOMAS E. MOONEY,
General Counsel.

DAVID P. SCHIPPERS,
Chief Investigative Counsel.

Dated: January 14, 1999.

The CHIEF JUSTICE. I would like to inform Members of the Senate and the parties in this case of my need to stand on occasion to stretch my back. I have no intention that the proceedings should be in any way interrupted when I do so.

The Presiding Officer notes the presence in the Senate Chamber of the managers on the part of the House of Representatives and counsel for the President of the United States.

Pursuant to the provisions of Senate Resolution 16, the managers for the House of Representatives have 24 hours to make the presentation of their case. The Senate will now hear you.

The Presiding Officer recognizes Mr. Manager HYDE to begin the presentation of the case for the House of Representatives.

Mr. Manager HYDE. Mr. Chief Justice, distinguished counsel for the President, and Senators, we are brought together on this solemn and historic occasion to perform important duties assigned to us by the Constitution.

We want you to know how much we respect you and this institution and how grateful we are for your guidance and your cooperation.

With your permission, we, the managers of the House, are here to set forth the evidence in support of two articles of impeachment against President William Jefferson Clinton. You are seated in this historic Chamber not to embark on some great legislative debate, which these stately walls have so often witnessed, but to listen to the evidence, as those who must sit in judgment.

To guide you in this grave duty, you have taken an oath of impartiality. With the simple words "I do," you have pledged to put aside personal bias and partisan interest and to do "impartial justice." Your willingness to take up this calling has once again reminded the world of the unique brilliance of America's constitutional system of Government. We are here, Mr. Chief Justice and distinguished Senators, as advocates for the rule of law, for equal justice under the law and for the sanctity of the oath.

The oath. In many ways, the case you will consider in the coming days is about those two words: "I do," pronounced at two Presidential inaugurations by a person whose spoken words have singular importance to our Nation and to the great globe itself.

More than 450 years ago, Sir Thomas More, former Lord Chancellor of England, was imprisoned in the Tower of London because he had, in the name of conscience, defied the absolute power of the King. As the playwright Robert Bolt tells it, More was visited by his family, who tried to persuade him to speak the words of the oath that would save his life, even while, in his mind and heart, he held firm to his conviction that the King was in error. More refused. As he told his daughter, Margaret, "When a man takes an oath, Meg, he's holding his own self in his hands. Like water. And if he opens his fingers then—he needn't hope to find himself again . . ." Sir Thomas More, the most brilliant lawyer of his generation, a scholar with an international reputation, the center of a warm and affectionate family life which he cherished, went to his death rather than take an oath in vain.

Members of the Senate, what you do over the next few weeks will forever affect the meaning of those two words: "I do." You are now stewards of the oath. Its significance in public service and our cherished system of justice will never be the same after this. Depending on what you decide, it will either be strengthened in its power to achieve justice or it will go the way of so much of our moral infra-

structure and become a mere convention, full of sound and fury, signifying nothing.

The House of Representatives has named myself and 12 other Members as managers of its case. I have the honor of introducing those distinguished Members and explaining how we will make our initial presentation. The gentleman from Wisconsin, Representative JIM SENSENBRENNER, will begin the presentation with an overview of the case. Representative SENSENBRENNER is the ranking Republican member of the House Judiciary Committee, and has served for 20 years. In 1989, Representative SENSENBRENNER was a House manager in the impeachment trial of Judge Walter L. Nixon, who was convicted on two articles of impeachment for making false and misleading statements before a federal grand jury.

Following Representative SENSENBRENNER will be a team of managers who will make a presentation of the relevant facts of this case. From the very outset of this ordeal, there has been a great deal of speculation and misinformation about the facts. That has been unfortunate for everyone involved. We believe that a full presentation of the facts and the law by the House managers—will be helpful.

Representative ED BRYANT, from Tennessee, was a United States Attorney from the Western District of Tennessee. As a captain in the Army, Representative BRYANT served in the Judge Advocate General Corps and taught at the United States Military Academy at West Point. Representative BRYANT will explain the background of the events that led to the illegal actions of the President.

Following Representative BRYANT, Representative ASA HUTCHINSON, from Arkansas, will give a presentation of the factual basis for article II, obstruction of justice. Representative HUTCHINSON is a former United States Attorney for the Western District of Arkansas.

Next, you will hear from Representative JIM ROGAN of California. Representative ROGAN is a former California State judge and Los Angeles County Deputy District Attorney. Representative ROGAN will give a presentation of the factual basis for article I, grand jury perjury. This should conclude our presentation for today.

Tomorrow, Representative BILL MCCOLLUM of Florida will tie all of the facts together and give a factual summation. Representative MCCOLLUM is the Chairman of the Subcommittee on Crime, a former Naval Reserve Commander and member of the Judge Advocate General Corps.

Following the presentation of the facts, a team of managers will present the law of perjury and the law of obstruction of justice and how it applies to the articles of impeachment before you. While the Senate has made it clear that a crime is not essential to impeachment and removal from office, these managers will explain how egregious and criminal the conduct alleged in the articles of impeachment is. This team includes Representative GEORGE GEKAS of Pennsylvania, Representative STEVE CHABOT of Ohio, Representative BOB BARR of Georgia, and Representative CHRIS CANNON of Utah. Representative GEKAS is the Chairman of the Subcommittee on Commercial and Administrative Law. And in 1989, Representative GEKAS served as a manager of the impeachment trial of Judge Alcee Hastings, who the Senate convicted on eight articles for mak-

ing false and misleading statements under oath and one article of conspiracy to engage in a bribery. Representative GEKAS is a former assistant district attorney. Representative CHABOT serves on the Subcommittee on Crime and has experience as a criminal defense lawyer. Representative BARR is a former United States Attorney for the Northern District of Georgia, where he specialized in public corruption. He also has experience as a criminal defense attorney. Representative CANNON has had experience as the Deputy Associate Solicitor General of the Department of the Interior and as a practicing attorney. That should conclude our presentation for Friday.

On Saturday, three managers will make a presentation on Constitutional law as it relates to this case. There has been a great deal of argument about whether the conduct alleged in the articles rises to the level of removable offenses. This team's analysis of the precedents of the Senate and application of the facts of this case will make it clear that the Senate has established the conduct alleged in the articles to be removable offenses. In this presentation you will hear from Representative CHARLES CANADY of Florida, Representative STEVE BUYER of Indiana and Representative LINDSEY GRAHAM of South Carolina. Representative CANADY is the Chairman of the Subcommittee on the Constitution and one of the leading voices on constitutional law in the House. Representative BUYER served in the United States Army as a member of the Judge Advocate General's Corps where he was assigned as Special Assistant to the United States Attorney in Virginia. He also served as a deputy to the Indiana Attorney General. Representative GRAHAM served in the Air Force as a member of the Judge Advocate General's Corps and as a South Carolina Assistant Attorney.

Following the presentation of the facts, the law of perjury and obstruction of justice and constitutional law, Mr. ROGAN and myself will give you a final summation and closing to our initial presentation.

The CHIEF JUSTICE. Mr. Manager SENSENBRENNER is recognized.

Mr. Manager SENSENBRENNER. Mr. Chief Justice, distinguished counsel to the President, and Senators, in his third annual message to Congress on December 7, 1903, President Theodore Roosevelt said:

> No man is above the law and no man is below it; nor do we ask any man's permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.

We are here today because President William Jefferson Clinton decided to put himself above the law—not once, not twice, but repeatedly. He put himself above the law when he engaged in a multifaceted scheme to obstruct justice during the Federal civil rights case of Paula Corbin Jones versus William Jefferson Clinton, et. al. He put himself above the law when he made perjurious, false and misleading statements under oath during his grand jury testimony on August 17, 1998. In both instances, he unlawfully attempted to prevent the judicial branch of Government—a coequal branch—from performing its constitutional duty to administer equal justice under the law.

The U.S. House of Representatives has determined that the President's false and misleading testimony to the grand jury and his obstruction of justice in the Jones lawsuit are high crimes and misdemeanors within the meaning of the Constitution. Should the Senate conduct a fair and impartial trial which allows each side to present its best case, then the American public can be confident that justice has been served, regardless of the outcome.

We hear much about how important the rule of law is to our Nation and to our system of government. Some have commented that this expression is trite. But, whether expressed by these three words, or others, the primacy of law over the rule of individuals is what distinguishes the United States from most other countries and why our Constitution is as alive today as it was 210 years ago.

The framers of the Constitution devised an elaborate system of checks and balances to ensure our liberties by making sure that no person, institution, or branch of Government became so powerful that a tyranny could ever be established in the United States of America.

We are the trustees of that sacred legacy and whether the rule of law and faith in our Nation emerges stronger than ever or are diminished irreparably, depends upon the collective decision of the message each Senator chooses to send forth in the days ahead.

The evidence you will hear relates solely to the President's misconduct, which is contrary to his constitutional public responsibility to ensure the laws be faithfully executed. It is not about the President's affair with a subordinate employee, an affair that was both inappropriate and immoral. Mr. Clinton has recognized that this relationship was wrong. I give him credit for that. But he has not owned up to the false testimony, the stonewalling and legal hair-splitting, and obstructing the courts from finding the truth. In doing so, he has turned his affair into a public wrong. And for these actions, he must be held accountable through the only constitutional means the country has available—the difficult and painful process of impeachment.

Impeachment is one of the checks the framers gave to Congress to protect the American people from a corrupt or tyrannical executive or judicial branch of Government. Because the procedure is cumbersome and because a two-thirds vote in the Senate is required to remove an official following an impeachment trial, safeguards are there to stop Congress from increasing its powers at the expense of the other two branches. The process is long. It is difficult. It is unpleasant. But, above all, it is necessary to maintain the public's trust in the conduct of their elected officials—elected officials, such as myself and yourselves, who through our oaths of office have a duty to follow the law, fulfill our constitutional responsibilities, and protect our Republic from public wrongdoing.

The Framers of the Constitution envisioned a separate and distinct process in the House and in the Senate. They did not expect the House and Senate to conduct virtually identical proceedings with the only difference being that conviction in the Senate requires a two-thirds vote. That is why the Constitution reserves the sole power of impeachment to the House of Representatives and the sole power to try all impeachments to the Senate. History dem-

onstrates different processes were adopted to reflect very different roles.

In the case of President Andrew Johnson, no hearings were held or witnesses called by the House on the President's decision to remove Secretary of War Stanton from office. The House first approved a general article of impeachment that simply stated that President Johnson was impeached for high crimes and misdemeanors. Five days later, a special House committee drew up specific articles. Eleven articles were passed by the House, all but two of which were based upon President Johnson's alleged violation of the Tenure of Office Act by his actions in removing Secretary of War Stanton. The trial was then conducted with witnesses in the Senate.

In the case of President Nixon, the House Judiciary Committee passed three articles of impeachment based not upon their own investigation, but upon the evidence gathered by the Ervin Committee, the Patman Committee, the Joint Tax Committee, and material from the special prosecutor and various court proceedings. Nine witnesses were called at the end of the impeachment inquiry, five of them at the request of the White House, and their testimony was not at the center of the impeachment articles.

In the Judge Walter Nixon impeachment in 1989, a trial with live witnesses was held even after the Senate rejected by less than a two-thirds vote a defense motion to dismiss one article of impeachment on the grounds that it did not constitute an impeachable offense.

The House managers submit that witnesses are essential to give heightened credence to whatever judgment the Senate chooses to make on each of the articles of impeachment against President Clinton.

The matter of how this proceeding will be conducted remains somewhat unsettled. Senate impeachment precedent has been to hold a trial. In every impeachment case, the Senate has heard from live witnesses. Should the President's counsel dispute the facts as laid out by the House of Representatives, the Senate will need to hear from live witnesses in order to reach a proper and fair judgment as to the truthful facts of this case.

The House concluded the President made perjurious, false and misleading statements before the grand jury, which the House believes constitute a high crime and misdemeanor. Our entire legal system is based upon the courts being able to find the truth. That's why witnesses must raise their right hand and swear to tell the truth, the whole truth, and nothing but the truth. That's why there are criminal penalties for perjury and making false statements under oath. The need for obtaining truthful testimony in court is so important that the Federal sentencing guidelines have the same penalties for perjury as for bribery.

The Constitution specifically names bribery as an impeachable offense. Perjury is the twin brother of bribery. By making the penalty for perjury the same as that for bribery, Congress has acknowledged that both crimes are equally serious. It follows that perjury and making false statements under oath, which is a form of perjury, be considered among the "high crimes and misdemeanors" the framers intended to be grounds for impeachment.

The three judicial impeachments of the 1980s were all about lies told by a federal judge. Judge Claiborne was removed from office for lying on his income tax returns, Judge Hastings was removed for lying under oath during a trial, and Judge Nixon was removed for making false statements to a grand jury. In each case, the Senate showed no leniency to judges who lied. Their misconduct was deemed impeachable and more than two-thirds of the Senate voted to convict.

If the Senate is convinced that President Clinton lied under oath and does not remove him from office, the wrong message is given to our courts, those who have business before them, and to the country as a whole. That terrible message is that we as a nation have set a lower standard for lying under oath for Presidents than for judges. Should not the leader of our country be held to at least as high a standard as the judges he appoints? Should not the President be obliged to tell the truth when under oath, just as every citizen must? Should not our laws be enforced equally? Your decision in this proceeding will answer these questions and set the standard of conduct of public officials in town halls and courtrooms and the Oval Office for generations.

Justice is never served by the placing of any public official above the law. The framers rejected the British law of "The King can do no wrong," when they wrote our basic law in 1787. Any law is only as good as its enforcement, and the enforcement of the law against the President was left to Congress through the impeachment process.

A Senate conviction of the President in this matter will reaffirm the irrefutable fact that even the President of the United States has no license to lie under oath. Deceiving the courts is an offense against the public. It prevents the courts from administering justice and citizens from receiving justice. Every American has the right to go to court for redress of wrongs, as well as the right to a jury trial. The jury finds the facts. The citizens on the jury cannot correctly find the facts absent truthful testimony. That's why it's vital that the Senate protect the sanctity of the oath to obtain truthful testimony, not just during judicial proceedings but also during legislative proceedings.

Witnesses before Congress, whether Presidential nominees seeking Senate confirmation to high posts in the executive or judicial branches, federal agency heads testifying during investigative hearings, or witnesses at legislative hearings giving their opinions on bills are sworn to tell the truth. Eroding the oath to tell the truth means that Congress loses some of its ability to base its decisions upon truthful testimony. Lowering the standard of the truthfulness of sworn testimony will create a cancer that will keep the legislative branch from discharging its constitutional functions as well.

Mr. Chief Justice, we are here today because William Jefferson Clinton decided to use all means possible—both legal and illegal—to subvert the truth about his conduct relevant to the federal civil rights suit brought against President Clinton by Ms. Paula Jones. Defendants in civil lawsuits cannot pick and choose which laws and rules of procedure they will follow and which they will not. That's for the trial judge to decide, whether the defendant be President or pauper.

In this case, a citizen claimed her civil rights were violated when she refused then Governor Clinton's advances and was subsequently harassed at work, denied merit pay raises, and finally forced to quit. The court ruled she had the right to obtain evidence showing other women including Ms. Lewinsky, got jobs, promotions, and raises after submitting to Mr. Clinton, and whether other women suffered job detriments after refusing similar advances.

When someone lies about an affair and tries to hide the fact, they violate the trust their spouse and family put in them. But when they lie about it during a legal proceeding and obstruct the parties from obtaining evidence, they prevent the courts from administering justice.

That is an offense against the public, made even worse when a poor or powerless person seeks the protections of our civil rights from the rich or powerful.

When an American citizen claims his or her civil rights have been violated, we must take those claims seriously. Our civil rights laws have remade our society for the better. The law gives the same protections to the child denied entry to a school or college based upon race as to an employee claiming discrimination at work. Once a hole is punched in civil rights protections for some, those protections are not worth as much for all. Many in the Senate have spent their lives advancing individual rights. Their successful efforts have made America a better place. In my opinion, this is no time to abandon that struggle—no matter the public mood or the political consequence.

Some have said that the false testimony given by the President relating to sex should be excused, since as the argument goes: "Everyone lies about sex." I ask the Senate to stop to think about the consequences of adopting that attitude. Our sexual harassment laws would become unenforceable since every sexual harassment lawsuit is about sex and much of domestic violence litigation is at least partly about sex. If defendants in these types of suits are allowed to lie about sex, justice cannot be done, and many victims, mostly women, will be denied justice.

Mr. Chief Justice, the House has adopted two articles of impeachment against President William Jefferson Clinton. Each meets the standard of "high crimes and misdemeanors" and each is amply supported by the evidence.

Article I impeaches the President for "perjurious, false and misleading" testimony during his August 17, 1998, appearance before a grand jury of the United States in four areas.

First, the nature and details of his relationship with a subordinate government employee;

Second, prior perjurious, false and misleading testimony he gave in a federal civil rights action brought against him;

Third, prior false and misleading statements he allowed his attorney to make to a federal judge in that federal civil rights lawsuit;

Fourth, his corrupt efforts to influence the testimony of witnesses and to impede the discovery of evidence in that civil rights action.

The evidence will clearly show that President Clinton's false testimony to the grand jury was not a single or isolated instance

which could be excused as a mistake but, rather, a comprehensive and calculated plan to prevent the grand jury from getting the accurate testimony in order to do its job. Furthermore, it is important to dispel the notion that the President's false testimony before the grand jury simply relates to details of the relationship between President Clinton and Ms. Lewinsky. These charges only make up a small part of article I. The fact is, the evidence will show that President Clinton made numerous perjurious, false and misleading statements regarding his efforts to obstruct justice.

Before describing what the evidence in support of article I shows, it is also important to clearly demonstrate that the Senate has already decided that making false statements under oath to a federal grand jury is an impeachable offense.

The last impeachment decided by the Senate, that of United States District Judge Walter L. Nixon, Jr., of the United States District Court for the Southern District of Mississippi, involved the Judge's making false statements under oath to a federal grand jury, precisely the same charges contained in article I against President Clinton. Following an unanimous 417 to 0 vote in the House, the Senate conducted a full trial and removed Judge Nixon from office on the two articles charging false statements to a grand jury by votes of 89 to 8 and 78 to 19. The Senate was clear that the specific misconduct, that is, making false statements to a grand jury, which was the basis for the Judge's impeachment, warranted his removal from office and the Senate proceeded to do just that.

These votes, a little more than nine years ago on November 3, 1989, set a clear standard that lying to a grand jury is grounds for removal from office. To set a different standard in this trial is to say that the standard for judicial truthfulness during grand jury testimony is higher than that of presidential truthfulness.

That result would be absurd. The truth is the truth and a lie is a lie. There cannot be different levels of the truth for judges than for presidents.

The President's perjurious, false and misleading statements regarding his relationship with Ms. Lewinsky began early in his grand jury testimony. These statements included parts of the prepared statement the President read at the beginning of his testimony. He referred or reverted to his statement at least 19 times during the course of his testimony.

Further, the evidence will show the President made other false statements to the grand jury regarding the nature and details of his relationship with Ms. Lewinsky at times when he did not refer to his prepared statement.

Second, the evidence will show that the President piled perjury upon perjury when he provided perjurious, false and misleading testimony to the grand jury concerning prior perjurious, false and misleading testimony given in Ms. Paula Jones' case.

On two occasions, the President testified to the grand jury that his deposition testimony was the truth, the whole truth, and nothing but the truth, and that he was required to give a complete answer to each question asked of him during the deposition. That means he brought to the grand jury his untruthful answers to questions at the deposition.

Third, the evidence will show the President provided perjurious, false and misleading testimony to a Federal grand jury regarding his attorney's use of an affidavit he knew to be false during the deposition in Ms. Paula Jones' case before Federal Judge Susan Webber Wright.

The President denied that he even paid attention to Mr. Bennett's use of the affidavit. The evidence will show he made this denial because his failure to stop his attorney from utilizing a false affidavit at a deposition would constitute obstruction of justice. The evidence will also show the President did not admit that Mr. Bennett's statement was false because to do so would be to admit that he had perjured himself earlier that day during the grand jury testimony, as well as at the deposition.

Fourth, the evidence will show that the President provided perjurious, false and misleading testimony to the grand jury concerning his corrupt efforts to influence the testimony of witnesses and to impede the discovery of evidence in Ms. Paula Jones' civil rights action.

The evidence will show that these statements related to at least four areas:

First, his false statements relating to gifts exchanged between the President and Ms. Lewinsky. The subpoena served on Ms. Lewinsky in the Jones case required her to produce each and every gift she had received from the President. These gifts were not turned over as required by the subpoena but ended up under Ms. Betty Currie's bed in a sealed container. The President denied under oath that he directed Ms. Currie to get the gifts, but the evidence will show that Ms. Currie did call Ms. Lewinsky about them and that there was no reason for her doing so unless directed by the President.

Second, the President made perjurious, false and misleading statements to the grand jury regarding his knowledge that the Lewinsky affidavit submitted at the deposition was untrue. The evidence will show that the President testified falsely on this issue on at least three separate occasions during his grand jury testimony. He also provided false testimony on whether he encouraged Ms. Lewinsky to file a false affidavit.

Third, the President made false and misleading statements to the grand jury by reciting a false account of the facts regarding his interactions with Ms. Lewinsky and Ms. Currie, who was a potential witness against him in Ms. Jones' case.

The record reflects the President tried to coach Ms. Currie to recite inaccurate answers to possible questions should she be called as a witness. The evidence will show the President testified to the grand jury that he was trying to figure out what the facts were, but in reality the conversation with Ms. Currie consisted of a number of very false and misleading statements.

Finally, the President made perjurious, false and misleading statements to aides regarding his relationship with Ms. Lewinsky. In his grand jury testimony, the President tried to have it both ways on this issue. He testified that his statements to aides were both true and misleading—true and misleading.

The evidence will show that he met with four aides who would later be called to testify before the grand jury. They included Mr.

Sidney Blumenthal, Mr. John Podesta, Mr. Erskine Bowles, and Mr. Harold Ickes. Each of them related to the grand jury the untruths they had been told by the President. I have recited this long catalogue of false statements to show that the President's false statements to the grand jury were neither few in number nor isolated but, rather, pervaded his entire testimony.

There can be no question that the President's false statements to the grand jury were material to the subject of the inquiry. Grand juries are utilized to obtain sworn testimony from witnesses to determine whether a crime has been committed. The Attorney General and the Special Division of the United States Court of Appeals for the District of Columbia Circuit appointed an independent counsel pursuant to law and added areas of inquiry because they believed there was evidence that the President may have committed crimes. Grand jury testimony relevant to the criminal probe is always material to the issue of whether someone has committed a crime.

Based upon the precedent in the Judge Nixon impeachment, the law, the facts, and the evidence, if you find the President made perjurious, false and misleading statements under oath to the grand jury, I respectfully submit that your duty will be to find William Jefferson Clinton guilty with respect to article I and to remove him from office.

Article II impeaches William Jefferson Clinton for preventing, obstructing, and impeding the administration of justice in the Jones case by either directly or through subordinates and agents engaging in a scheme to delay, impede, cover up, and conceal the existence of evidence and testimony relating to Ms. Jones' Federal civil rights action.

As in the case of article I, the President's direct and indirect actions were not isolated mistakes but were multifaceted actions specifically designed to prevent Ms. Paula Jones from having her day in court.

While the Senate determined in the Judge Nixon trial that the making of false statements to a Federal grand jury warranted conviction and removal from office, no impeachment on an obstruction of justice charge has ever reached the Senate.

Therefore, this article is a matter of first impression. However, the impeachment inquiry of the House Judiciary Committee into the conduct of President Richard Nixon, as well as the relevant Federal criminal statutes, clearly shows President Clinton's actions to be within the definition of "high crimes and misdemeanors" contained in the Constitution.

The first article of impeachment against President Nixon approved by the Judiciary Committee charged Mr. Nixon with "engag(ing) personally and through his subordinates and agents in a course of conduct or plan designed to delay, impede and obstruct the investigation of such unlawful entry; to cover up, conceal and protect those responsible and to conceal the existence and scope of other unlawful activities."

The article charged that the implementation of the plan included nine separate areas of misconduct. Included among these were, one, making or causing to be made false and misleading statements to investigative officers and employees of the United States; two,

withholding relevant and material evidence from such persons; three, approving, condoning, acquiescing in and counseling witnesses with respect to the giving of false and misleading statements to such persons as well as in judicial and congressional proceedings.

History shows us that President Nixon's resignation was the only act that prevented the Senate from voting on this article, and that the President's conviction and removal from office were all but certain.

There are two sections of the Federal Criminal Code placing penalties on those who obstruct justice. Title 18, United States Code, section 1503, punishes "whoever . . . corruptly, or by threats or force . . . obstructs, or impedes or endeavors to influence, obstruct or impede the due administration of justice."

The courts have held that this section relates to pending judicial process, which can be a civil action. Ms. Jones' case fits that definition at the time of the President's actions as alleged in article II, as does the Office of Independent Counsel's investigation.

Title 18, United States Code, section 1512, punishes, "Whoever . . . corruptly persuades another person, or attempts to do so, or engages in misleading conduct toward another person, with intent to . . . influence, delay or prevent the testimony of any person in an official proceeding . . . (or) cause or induce any person to . . . withhold testimony, or withhold a record, document, or other object from an official proceeding. . . ."

The evidence will show that President Clinton's actions constituted obstruction of justice in seven specific instances as alleged in article II. Paragraph one alleges that on or about December 17, 1997, the President encouraged Ms. Lewinsky, who would be subpoenaed as a witness in Ms. Jones' case two days later, to execute a sworn affidavit that he knew would be perjurious, false, and misleading.

The evidence will show the President's actions violated both Federal criminal obstruction statutes.

Second, article II alleges that on or about that same day, the President corruptly encouraged Ms. Lewinsky to give perjurious, false, and misleading testimony if and when called to testify personally in that proceeding. Ms. Lewinsky, on the witness list at that time, could have been expected to be required to give live testimony in the Jones case and in fact she was subsequently subpoenaed for a deposition in that case.

The evidence will show the President's actions violated both Federal criminal obstruction statutes.

Third, article II alleges on or about December 28, 1997, the President corruptly engaged in, encouraged, or supported a scheme to conceal evidence which had been subpoenaed in Ms. Jones' civil rights case. He did so by asking Ms. Betty Currie to retrieve evidence from Ms. Lewinsky that had been subpoenaed in the case of Jones v. Clinton.

The evidence will show the President's actions violated the second Federal criminal obstruction statute.

Fourth, article II alleges that beginning on or about December 7, 1997, and continuing through and including January 14, 1998, the President intensified and succeeded in an effort to secure job as-

sistance to Ms. Lewinsky in order to corruptly prevent her truthful testimony in the Jones case at a time when her truthful testimony would have been harmful to him.

While Ms. Lewinsky had sought employment in New York City long before the dates in question, helping her find a suitable job was clearly a low priority for the President and his associates until it became obvious she would become a witness in the Jones case. The evidence will clearly show an intensification of that effort after her name appeared on the witness list. This effort was ultimately successful and the evidence will show that the President's actions violated both Federal obstruction statutes.

Fifth, article II alleges on January 17, 1998, the President corruptly allowed his attorney to make false and misleading statements to Judge Wright characterizing the Lewinsky affidavit in order to prevent questioning deemed relevant by the judge. The President's attorney, Robert Bennett, subsequently acknowledged such false and misleading statements in a communication to Judge Wright.

The evidence will show the President's actions clearly violate the second Federal criminal obstruction statute.

Sixth, article II alleges that on or about January 18, 20, and 21, 1998, the President related a false and misleading account of events relevant to Ms. Jones' civil rights suit to Ms. Betty Currie, a potential witness in the proceeding, in order to corruptly influence her testimony.

The evidence will show that President Clinton attempted to influence the testimony of Ms. Betty Currie, his personal secretary, by coaching her to recite inaccurate answers to possible questions that might be asked of her if called to testify in Ms. Paula Jones' case. The President did this shortly after he had been deposed in the civil action.

During the deposition, he frequently referred to Ms. Currie, and it was logical that, based upon his testimony, Ms. Currie would be called as a witness.

The evidence will show that two hours after the completion of the deposition, the President called Ms. Currie to ask her to come to the office the next day, which was a Sunday.

When Ms. Currie testified to the grand jury, she acknowledged the President made a series of leading statements or questions and concluded that the President wanted her to agree with him.

The evidence will show the President's actions violated both statutes but, most particularly, section 1512.

In *United States* v. *Rodolitz,* 786 F.2d 77 at 82 (2d Cir. 1986), cert. denied, 479 U.S. 826 (1986), the United States Court of Appeals for the Second Circuit said,

> The most obvious example of a section 1512 violation may be the situation where a defendant tells a potential witness a false story as if the story were true, intending that the witness believes the story and testifies to it before the grand jury.

If the President's actions do not fit this example, I'm at a loss to know what actions do.

Seventh, and last, article II alleges on or about January 21, 23, and 26, 1998, the President made false and misleading statements to potential witnesses in a Federal grand jury proceeding in order to corruptly influence this testimony of those witnesses. The article

further alleges these false and misleading statements were repeated by the witnesses to the grand jury, causing the grand jury to receive false and misleading information.

The evidence will show that these statements were made to Presidential aides Mr. Sidney Blumenthal, Mr. Erskine Bowles, Mr. John Podesta and Mr. Harold Ickes. They all testified to the grand jury. By his own admission seven months later, on August 17, 1998, during his sworn grand jury testimony, the President said that he told a number of aides that he did not have an affair with Ms. Lewinsky and did not have sex with her. He told one aide, Mr. Sidney Blumenthal, that Ms. Monica Lewinsky came on to him and he rebuffed her. President Clinton also admitted that he knew these aides might be called before the grand jury as witnesses. The evidence will show they were called; they related the President's false statements to the grand jury; and that by the time the President made his admission to the grand jury the damage had already been done.

This is a classic violation of 18 U.S.C. section 1512.

The seven specific allegations of obstruction of justice contained in article II were designed to prevent the judicial branch of government, a separate and coequal branch, from doing its work in Ms. Paula Jones' lawsuit. Based upon the allegation of article I against President Nixon in 1974, as well as repeated and calculated violations of two key criminal obstruction statutes, William Jefferson Clinton committed an impeachable offense.

In article II, the evidence is conclusive that President Clinton put himself above the law in obstructing justice, not once, not just a few times, but as a part of a extensive scheme to prevent Ms. Jones from obtaining the evidence she thought she needed to prove her civil rights claims.

Complying with the law is the duty of all parties to lawsuits and those who are required to give truthful testimony. A defendant in a Federal civil rights action does not have the luxury to choose what evidence the court may consider. He must abide by the law and the rules of procedure. William Jefferson Clinton tried to say that the law did not apply to him during his term of office in civil cases were concerned. He properly lost that argument in the Supreme Court in a unanimous decision.

Even though the Supreme Court decided that the President wasn't above the law and that Ms. Jones' case could proceed, William Jefferson Clinton decided—and decided alone—to act as if the Supreme Court had never acted and that Judge Wright's orders didn't apply to him. What he did was criminal, time and time again. These criminal acts were in direct conflict with the President's obligation to take care that the laws be faithfully executed.

Based upon the repeated violations of Federal criminal law, its effect upon the courts to find the truth, and the President's duty to take care that the laws be faithfully executed, if you find that the President did, indeed, obstruct the administration of justice through his acts, I respectfully submit your duty will be to find William Jefferson Clinton guilty with respect to article II and to remove him from office.

It is truly sad when the leader of the greatest nation in the world gets caught up in a series of events where one inappropriate and criminal act leads to another and another and another.

Even sadder is that the President himself could have stopped this process simply by telling the truth and accepting the consequences of his prior mistakes. At least six times since December 17, 1997, William Jefferson Clinton could have told the truth and suffered the consequences. Instead, he chose lies, perjury, and deception. He could have told the truth when he first learned that Ms. Lewinsky would be a witness in the Jones case. He could have told the truth at his civil deposition. He could have told the truth to Betty Currie. He could have told the truth when the news media first broke the story of his affair. He could have told the truth to his aides and cabinet. He could have told the truth to the American people. Instead, he shook his finger at each and every American and said, "I want you to listen to me," and proceeded to tell a straight-faced lie to the American people.

Finally, he had one more opportunity to tell the truth. He could have told the truth to the grand jury. Had he told the truth last January, there would have been no independent counsel investigation of this matter, no grand jury appearance, no impeachment inquiry, no House approval of articles of impeachment, and we would not be here today fulfilling a painful but essential constitutional duty. Instead, he chose lies and deception, despite warnings from friends, aides, and members of the House and Senate that failure to tell the truth would have grave consequences.

When the case against him was being heard by the House Judiciary Committee, he sent his lawyers, who did not present any new evidence to rebut the facts and evidence sent to the House by the Independent Counsel. Rather, they disputed the Committee's interpretation of the evidence by relying on tortured, convoluted, and unreasonable interpretations of the President's words and actions.

During his presentation to the House Judiciary Committee, the President's very able lawyer, Charles Ruff, was asked directly: Did the President lie during his sworn grand jury testimony?

Mr. Ruff could have answered that question directly. He did not, and his failure to do so speaks a thousand words.

Is there not something sacred when a witness in a judicial proceeding raises his or her right hand and swears before God and the public to tell the truth, the whole truth, and nothing but the truth? Do we want to tell the country that its leader gets a pass when he is required to give testimony under oath? Should we not be concerned about the effect of allowing perjurious, false, and misleading statements by the President to go unpunished on the truthfulness of anyone's testimony in future judicial or legislative proceedings? What do we tell the approximately 115 people now in Federal prison for the crime of perjury?

The answers to all these questions ought to be obvious.

As elected officials, our opinions are frequently shaped by constituents telling us their own stories. Let me tell you one related to me about the poisonous results of allowing false statements under oath to go unpunished.

Last October while the Starr report was being hotly debated, one circuit court judge for Dodge County, WI, approached me on the

street in Mayville, WI. He said that some citizens had business in his court and suggested that one of them take the witness stand and be put under oath to tell the truth. The citizen then asked if he could tell the truth "just like the President."

How many people who have to come to court to testify under oath about matters they would like to keep to themselves think about what that citizen asked Judge John Storck? How will the courts be able to administer the "equal justice under law" we all hold so dear if we do not enforce the sanctity of that oath even against the President of the United States?

When each of us is elected or chosen to serve in public office, we make a compact with the people of the United States of America to conduct ourselves in an honorable manner, hopefully setting a higher standard for ourselves than we expect of others. That should mean we are careful to obey all the laws we make, execute, and interpret.

There is more than truth in the words, "A public office is a public trust."

When someone breaks that trust, he or she must be held accountable and suffer the consequences for the breach. If there is no accountability, that means a President can set himself above the law for 4 years, a Senator for 6, a Representative for 2, and a judge for life. That, Mr. Chief Justice, poses a far greater threat to the liberties guaranteed to the American people by the Constitution than anything imaginable.

For the past 11 months, the toughest questions I have had to answer have come from parents who wanted to know what to tell their children about what President Clinton did.

Every parent tries to teach their children to know the difference between right and wrong, to always tell the truth, and when they make mistakes, to take responsibility for them, and to face the consequences of their actions.

President Clinton's actions at every step since he knew Ms. Lewinsky would be a witness in Ms. Jones' case have been completely opposite to the values parents hope to teach their children.

But being a poor example isn't grounds for impeachment. Undermining the rule of law is. Frustrating the court's ability to administer justice turns private misconduct into an attack upon the ability of one of the three branches of our government to impartially administer justice. This is a direct attack upon the rule of law in our country and a very public wrong that goes to the constitutional workings of our government and its ability to protect the civil rights of even the weakest American.

What is on trial here is the truth and the rule of law. Failure to bring President Clinton to account for his serial lying under oath and preventing the courts from administering equal justice under law will cause a cancer to be present in our society for generations.

Those parents who ask the questions should be able to tell their children that even if you are the President of the United States, if you lie when sworn to tell the truth, the whole truth and nothing but the truth, you will face the consequences of that action even when you won't accept the responsibility for it.

How those parents will answer those questions is up to the U.S. Senate.

While how today's parents answer those questions is important, equally important is what parents tell their children in the generations to come about the history of our country and what has set our government in the United States of America apart from the rest of the world.

Above the President's dais in this Senate chamber appears our national motto: "E pluribus unum"—"out of many, one." When that motto was adopted more than 200 years ago, the First Congress referred to how 13 separate colonies turned themselves into one united nation.

As the decades have gone by, that motto has taken an additional meaning. People of all nationalities, faiths, creeds, and values have come to our shores, shed their allegiances to their old countries and achieved their dreams to become Americans.

They came here to flee religious persecution, to escape corrupt, tyrannical and oppressive governments, and to leave behind the economic stagnation and endless wars of their homelands.

They came here to be able to practice their faiths as they saw fit—free of government dictates and to be able to provide better lives for themselves and their families by the sweat of their own brows and the use of their own intellect.

But they also came here because they knew America has a system of government where the Constitution and laws protect individual liberties and human rights. Everyone—yes, everyone—can argue that this country has been a beacon for the individual citizen's ability to be what he or she can be.

From countries where the rulers ruled at the expense of the people, they fled to America where the leaders were expected to govern for the benefit of the people.

Throughout the years, America's leaders have tried to earn the trust of the American people, not by their words but by their actions.

America is a place where government exists by the consent of the governed, and that means our Nation's leaders must earn and re-earn the trust of the people with everything they do.

Whenever an elected official stumbles, that trust is eroded and public cynicism goes up. The more cynicism that exists about government, its institutions, and those chosen to serve in them, the more difficult the job is for those who are serving.

That's why it is important—yes, vital—that when a cancer exists in the body politic, our job—our duty—is to excise it. If we fail in our duty, I fear the difficult and dedicated work done by thousands of honorable men and women elected to serve not just here in Washington but in our State capitals, city halls, courthouses and school board rooms, will be swept away in a sea of public cynicism. We must not allow the beacon of America to grow dim or the American dream to disappear with each waking morning.

In 1974, the Congress did its painful public duty when the President of the United States broke the public trust.

During the last decade, both Houses impeached and removed three Federal judges who broke their trust with the people.

During the last 10 years, the House of Representatives disciplined two Speakers for breaking the rules and their trust with the public.

Less than 6 years ago, this honorable Senate did the same to a senior Senator whose accomplishments were widely praised.

In each case, Congress did the right thing to help restore the vital trust upon which our Government depends. It wasn't easy, nor was it always popular, but Congress did the right thing. Now this honorable Senate must do the right thing. It must listen to the evidence; it must determine whether William Jefferson Clinton repeatedly broke our criminal laws and thus broke his trust with the people—a trust contained in the Presidential oath put into the Constitution by the framers—an oath that no other Federal official must take, an oath to ensure that the laws be faithfully executed.

How the Senate decides the issues to be presented in this trial will determine the legacy we pass to future generations of Americans.

The Senate can follow the legacy of those who have made America what it is.

The Senate can follow the legacy of those who put their "lives, fortunes and Sacred Honor" on the line when they signed the Declaration of Independence.

The Senate can follow the legacy of the framers of the Constitution whose preamble states that one of its purposes is "to establish justice."

The Senate can follow the legacy of James Madison and the Members of the First Congress who wrote and passed a Bill of Rights to protect and preserve the liberties of the American people.

The Senate can follow the legacy of those who achieved equal rights for all Americans during the 1960s in Congress, in the courts, on the streets, in the buses, and at the lunch counters.

The Senate can follow the legacy of those who brought President Nixon to justice during Watergate in the belief that no President can place himself above the law.

The Senate can follow the legacy of Theodore Roosevelt who lived and governed by the principle that no man is above the law.

Within the walls of the Capitol and throughout this great country there rages an impassioned and divisive debate over the future of this Presidency. This Senate now finds itself in the midst of the tempest. An already immense and agonizing duty is made even more so because the whims of public opinion polls, the popularity and unpopularity of individuals, even questions over the strength of our economy, risk subsuming the true nature of this grave and unwelcome task.

We have all anguished over the sequence of events that have led us to this, the conclusive stage in the process. We have all identified in our own minds where it could have and should have stopped, but we have ended up here, before the Senate of the United States, where you, the Senators, will have to render judgment based upon the facts.

A scientist in search of the basic nature of a substance begins by boiling away what is not of the essence. Similarly, the Senate will sift through the layers of debris that shroud the truth. The residue of this painful and divisive process is bitter, even poisonous at times. But beneath it lies the answer. The evidence will show that at its core, the question over the President's guilt and the need for his conviction will be clear because at its core, the issues involved

are basic questions of right versus wrong—deceptive, criminal behavior versus honesty, integrity, and respect for the law.

The President engaged in a conspiracy of crimes to prevent justice from being served. These are impeachable offenses for which the President should be convicted. Over the course of the days and weeks to come, we, the House managers, will endeavor to make this case.

May these proceedings be fair and thorough. May they embody our highest capacity for truth and mutual respect. With these principles as our guides, we can begin with the full knowledge our democracy will prevail and that our Nation will emerge a stronger, better place.

Our legacy now must be not to lose the trust the people should have in our Nation's leaders.

Our legacy now must be not to cheapen the legacies left by our forebears.

Our legacy must be to do the right thing based upon the evidence.

For the sake of our country, the Senate must not fail.

Thank you.

The CHIEF JUSTICE. The Chair recognizes Mr. Manager BRYANT.

Mr. Manager BRYANT. Mr. Chief Justice, Members of the Senate, and my distinguished colleagues from the bar, I am ED BRYANT, the Representative from the Seventh District of Tennessee. During this portion of the case, I, along with Representative ASA HUTCHINSON of Arkansas, Representative JAMES ROGAN of California, and Representative BILL MCCOLLUM of Florida, will present the factual elements of this case. Our presentation is a very broad roadmap with which, first, I will provide the history and background of the parties, followed by Mr. HUTCHINSON and Mr. ROGAN, who will review the articles of impeachment. Mr. MCCOLLUM will close with a summation of these facts and evidence.

It is our intent to proceed in a chronological fashion, although by necessity there will be some overlap of the facts and circumstances arising from what I have called "the four-way intersection collision" of President William Jefferson Clinton, Ms. Paula Corbin Jones, Monica Lewinsky, and the U.S. Constitution.

As a further preface to my remarks, permit me to say that none of us present here today in this hallowed Chamber relishes doing this job before us. But we did not choose to be involved in that reckless misconduct, nor did we make those reasoned and calculated decisions to cover up that misconduct which underlies this proceeding. However, this collision at the intersection, if you will, of the President, Ms. Jones, and Ms. Lewinsky, is not in and of itself enough to bring us together today. No. Had truth been a witness at this collision and prevailed, we would not be here. But when it was not present, even under an oath to tell the truth, the whole truth and nothing but the truth in a judicial matter, the impact of our Constitution must be felt. Hence, we are together today—to do our respective duties.

By voting these articles of impeachment, the House is not attempting to raise the standard of conduct to perfection for our po-

litical leadership. Such a person does not walk the world today. Everyone falls short of this mark every day.

Political life is not so much about how an individual fails but, rather, how the person reacts to that failure. For example, a person campaigning for a political office admits wrongdoing in his past and says he will not do that again. Most people accept that commitment. He is elected. Thereafter, he repeats this wrongdoing and is confronted again. What does he do? He takes steps to cover up this wrongdoing by using his workers and his friends. He lies under oath in a lawsuit which is very important to the person he is alleged to have harmed. He then takes a political poll as to whether he should tell the truth under oath. The poll indicates the voters would not forgive him for lying under oath. So he then denies the truth in a Federal grand jury. If this person is the President of the United States, the House of Representatives would consider articles of impeachment. It did and voted to impeach this President.

But do not let it be argued in these chambers that "we are not electing Saints; we are electing Presidents." Rather, let it be said that we are electing people who are imperfect and who have made mistakes in life but who are willing to so respect this country and the Office of the President that he or she will now lay aside their own personal shortcomings and have the inner strength to discipline themselves sufficiently that they do not break the law which they themselves are sworn to uphold.

Every trial must have a beginning and this trial begins on a cold day in January 1993.

[Text of videotape presentation:]

I, William Jefferson Clinton, do solemnly swear that I will faithfully execute the office of President of the United States, and will, to the best of my ability, preserve, protect and defend the Constitution of the United States. So help me God.

Mr. Manager BRYANT. I had expected a video portion, but all of you heard the audio portion. As you can hear from the audio portion—perhaps some of you can see—William Jefferson Clinton placed his left hand on the Bible in front of his wife, the Chief Justice, and every American watching that day and affirmatively acknowledged his oath of office. On that very day and again in January of 1997, the President joined a privileged few; he became only the 42nd person in our Nation to make the commitment to "faithfully execute" the office of the President and to "preserve, protect and defend the Constitution." He has the complete executive power of the Nation vested in him by virtue of this Constitution.

As we progress throughout the day, I would ask that you be reminded of the importance of this oath. Before you is a copy of it and certainly available as anyone would like to look at it on breaks.

William Jefferson Clinton is a man of great distinction. He is well-educated, with degrees from Georgetown University and Yale Law School. He has taught law school courses to aspiring young lawyers. He served as Governor and Attorney General for the State of Arkansas, enforcing the laws of that state. The President now directs our great Nation. He sets our agenda and creates national policy in a very public way. He is in fact a role model for many.

President Clinton also serves as the Nation's chief law enforcement officer.

It is primarily in this capacity that the President appoints Federal judges. Within the executive branch, he selected Attorney General Janet Reno and appointed each of the 93 U.S. attorneys who are charged with enforcing all Federal, civil, and criminal law in Federal courthouses from Anchorage, AK, to Miami, FL, and from San Diego, CA, to Bangor, ME.

Before you we have another chart which shows the schematics of the Department of Justice and how it is under the direct control of the President through his Cabinet, Attorney General and then down to such functions as the Federal Bureau of Investigation, the Drug Enforcement Administration, Immigration, U.S. Marshals Office, Bureau of Prisons, and so many other very important legal functions this Federal Government performs.

As protectors of our Constitution, the U.S. attorneys and their assistants prosecute more than 50,000 cases per year.

Through these appointments and his administration's policies, the President establishes the climate in this country for law and order. Each and every one of these 50,000 cases handled by his U.S. attorneys is dependent upon the parties and witnesses telling the truth under oath. Equally as important in these proceedings is that justice not be obstructed by tampering with witnesses nor hiding evidence.

Quoting from the November 9, 1998 Constitution Subcommittee testimony of attorney Charles J. Cooper, a Washington, DC attorney, he states:

> The crimes of perjury and obstruction of justice, like the crimes of treason and bribery, are quintessentially offenses against our system of government, visiting injury immediately upon society itself, whether or not committed in connection with the exercise of official government powers. Before the framing of our Constitution and since, our law has consistently recognized that perjury primarily and directly injures the body politic, for it subverts the judicial process and this strikes at the heart of the rule of law itself.

Professor Gary McDowell, the Director at the Institute for United States Studies at the University of London, also testified in the same hearing in reference to the influential writer William Paley, and this is also in chart form for those who would like to review it later. Paley saw the issue of oaths and perjury as one of morality as well as law. Because a witness swears that he will speak the truth, the whole truth and nothing but the truth, a person under oath cannot cleverly lie and not commit perjury. If the witness conceals any truth, Paley writes, that relates to the matter in adjudication, that is as much a violation of the oath as to testify a positive falsehood. Shame or embarrassment cannot justify his concealment of truth; linguistic contortions with the words used cannot legitimately conceal a lie or, if under oath, perjury.

Professor McDowell concludes with a quote from Paley which accurately provides, I believe, the essence of a lie or perjurious statement:

> It is willful deceit that makes the lie; and we willfully deceive, where our expressions are not true in the sense in which we believe the hearer apprehends them.

Neither has this U.S. Senate been silent on the issue of perjury. You have rightfully recognized through previous impeachment proceedings the unacceptable nature of a high government official lying under oath, even in matters initially arising from what some

would argue here are merely personal. In 1989, many of you present today, using the very same standard, which is section 4 of the Constitution, which is set forth there, for impeaching a Federal judge or the President, actually voted in support of a conviction and the removal of a U.S. district judge.

Indeed, truth-telling is the most important judicial precept underpinning our great system of justice, a system which permits the courthouse doors to be open to all people, from the most powerful man in America to a young woman from Arkansas.

On May 6, 1994, Paula Corbin Jones attempted to open that courthouse door when she filed a Federal sexual harassment lawsuit against President Clinton. The case arose from a 1991 incident when she was a State employee and he was the Governor. Further details of the underlying allegations are not important to us today, but Ms. Jones' pursuit for the truth is worth a careful study.

The parties first litigated the question of whether Ms. Jones' lawsuit would have to be deferred until after the President left office. The Supreme Court unanimously rejected the President's contention and allowed the case to proceed without further delay.

Ms. Jones sought and appropriately won "her day in court." Incumbent with this victory, however, was the reasonable expectation that President Clinton would tell the truth.

After all, this was the most important case in the whole world to Paula Corbin Jones.

Notwithstanding this, the fact didn't happen that the President told the truth. Even after the President was ordered to stand trial, pursuing the truth for Ms. Jones remained an elusive task. The evidence will indicate that President Clinton committed perjury and orchestrated a variety of efforts to obstruct justice, all of which—all of which—had the effect of preventing the discovery of the truth in the Paula Jones case.

During the discovery phase, Judge Susan Webber Wright of the U.S. District Court for the Eastern District Court of Arkansas ordered the President to answer certain historical questions about his sexual relations with either State or Federal employees.

In part, Judge Wright said:

> The Court finds, therefore, that the plaintiff is entitled to information regarding any individuals with whom the President had sexual relations or proposed or sought to have sexual relations and who were during the relevant time frame state or federal employees.

Judge Wright validated Ms. Jones' right to use this accepted line of questioning in sexual harassment litigation. More often than not, these cases involve situations where "he said/she said," and they produce issues of credibility and are often done in private. Because of this, they are really difficult for a victim to prove.

Such standard questions are essential in establishing whether the defendant has committed the same kind of acts before or since—in other words, a pattern or practice of harassing conduct. The existence of such corroborative evidence or the lack thereof is likely to be critical in these types of cases. Both the Equal Employment Opportunity Commission guidelines and the Federal Rules of Evidence permit this type of evidence. In short, a defendant's sexual history, at least with respect to other employees, is ordinarily discoverable in a sexual harassment lawsuit.

To not expect a defendant in this type of litigation to speak the truth creates, in its worst case, a very real danger to the entire area of sexual harassment law which would be irreparably damaged and, in its best case, sends out a very wrong message. As such, the will and intent of Congress with regard to providing protection against sexual harassment in the workplace would be effectively undermined.

The "pattern and practice" witnesses whom Paula Corbin Jones was entitled to discover should have included the name of Monica Lewinsky. But before I discuss the Ms. Lewinsky matter, I want to offer three matters of cause to each of you as jurors in this very important matter.

No. 1, I do not intend to discuss the specific details of the President's encounters with Ms. Lewinsky. However, I do not want to give the Senate the impression that those encounters are irrelevant or lack serious legal implications. In fact, every day in the courtrooms all across America, victims of sexual harassment, of rape, assault, and abuse must testify in many public cases in order to vindicate their personal rights and society's right to be free of these intolerable acts.

The President's lies about his conduct with Ms. Lewinsky in the Oval Office also make these unseemly details highly relevant. If you are to accept the President's version about the relationship, you must in effect say to Ms. Lewinsky that she is the one who is disregarding the truth. But beyond this, his denials also directly contradict Ms. Lewinsky's testimony, not only directly contradict Ms. Lewinsky's testimony but also contradict eight of her friends and the statements by two professional counselors with whom she contemporaneously shared details of her relationship. By law, their testimony may serve as proper and admissible evidence to corroborate her side of this important story.

No. 2, the evidence and testimony in this proceeding must be viewed as a whole; it cannot be compartmentalized. Please do not be misled into considering each event in isolation and then treating it separately. Remember, events and words that may seem innocent or even exculpatory in a vacuum may well take on a sinister or even criminal connotation when observed in the context of the whole plot.

For example, we all agree that Ms. Lewinsky testified, "No one ever told me to lie . . ." When considered alone, this statement would seem exculpatory. In the context of other evidence, however, we see that this one statement gives a misleading inference. Of course no one said, "Now, Monica, you go down there and lie." They didn't have to. Based upon their previous spoken and even unspoken words, Ms. Lewinsky knew what was expected of her. Surely, if the President were to come to the Senate floor and give testimony during this proceeding, he would not tell you that he honestly expected her to tell the truth about their personal relationship. After all, the purpose of her filing the false affidavit was to avoid testifying in the Jones case and discussing the nature of their relationship. If she had told the truth in that affidavit instead of lying, she would have been invited to testify immediately, if not sooner.

No. 3, throughout our presentation of the facts, especially as it relates to the various illegal acts, I ask you to pay particular attention to what I call the big picture. Look at the results of those various acts as well as who benefited. Please make a mental note now, if you can, and ask yourself always as you look at each one of these illegal acts that are presented to you: A. What was the result of that illegal act? B. Who benefited from that illegal act?

I believe you will find that the evidence will show that while the President's "fingerprints" may not be directly on the evidence proving these illegal acts, the result of the acts usually inures to the benefit of the President and the President alone. Subordinates and friends alike are drawn into this web of deceit. The President is insulated. Crimes are committed. Justice is denied. The rule of law is suspended. And this President is the beneficiary.

Some examples:

No. 1, subpoenaed evidence disappears from Ms. Lewinsky's apartment and reappears under Ms. Currie's bed. What was the result of that? Who had the benefit of that?

No. 2, Ms. Lewinsky files a false affidavit in the Jones case. What is the result of filing that false affidavit and who benefited from that?

No. 3, the President's attorney files the Lewinsky affidavit, not knowing it was false, representing to the Court that "there is absolutely no sex of any kind in any manner, shape, or form," while the President sits in the deposition and does not object to that—very silently sits in the deposition. What was the result of that? And who benefited from that filing of the affidavit?

No. 4, and finally, Ms. Lewinsky, after months of job searching in New York City, is offered a job with a Fortune 500 company in New York City within 48 hours of her signing this false affidavit. Who shared the results of that with Ms. Lewinsky? And who obtained the benefit of that?

Another example occurred in a meeting between the President and Ms. Lewinsky in July—on July 4, 1997, to be specific—when, as a part of their conversation, she mentioned she heard someone from Newsweek was working on a story about Kathleen Willey. The President has Ms. Lewinsky back for a visit on July 14, some 10 days later, following his return from an overseas trip. She was questioned about the Willey story and specifically if Linda Tripp had been her source.

Important to this point—important to this point—the President then asked Ms. Lewinsky to try to persuade Ms. Tripp to call White House Legal Counsel Bruce Lindsey. The President told her to notify Ms. Currie the following day, "without getting into the details with her, even mentioning names with her," whether Ms. Lewinsky had "mission accomplished" with Linda. And as you will learn from Mr. HUTCHINSON, who will follow me with his presentation, this is very similar to the method of operation with another job the President requested be done, which in that case succeeded with a "mission accomplished." I ask you to watch for that in Mr. HUTCHINSON's presentation.

I want to now rewind the clock back to November of 1995. We are here in Washington where Ms. Lewinsky has been working at the White House since July of 1995.

As you continue to listen to the evidence, from this point on November 15 forward, remember that Ms. Lewinsky and the President were alone in the Oval Office workplace area at least 21 times. And I have a list of these, in chart form, beginning in November of 1995 and going through 1996 and into the early part of 1997, continuing through the year. During that time, they had at least 11 of the so-called salacious encounters there in the workplace at various times during the day and night: Three in 1995, five in 1996, and three in 1997.

They also had in excess of 50 telephone conversations, most of which appear to have been telephone calls to and from Ms. Lewinsky's home. And I have a schedule of all these telephone calls to show you, the 50-plus telephone calls. Also, they exchanged some 64 gifts, with the President receiving 40 of these gifts and Ms. Lewinsky receiving 24 of these gifts. And again we have charts that reflect the receipt of both sets of gifts. And again these charts will be here in the front, always available for your inspection.

We also note that their affair began on November 15. Interestingly, there is even a conflict here with the President. According to Ms. Lewinsky, they had never spoken to each other up to that point. Yet he asked an unknown intern into the Oval Office and kissed her and then invited her back to return later that day, when the two engaged in the first of the 11 acts of misconduct.

The contradiction is in the statement that the President relied upon in his grand jury testimony that has been referenced earlier—very carefully worded—and that statement the President gave in testimony before the grand jury about meeting in this relationship. And he says, "I regret that what began as a friendship came to include this conduct . . ." Almost as if it had evolved over a period of time. So there is very clearly a conflict there.

As Ms. Lewinsky's internship was ending that year, she did apply and receive a paying job with the White House Office of Legislative Affairs. This position allowed her even more access to the Oval Office area. She remained a White House employee until April 1996 when she was reassigned to the Pentagon. The proof will show that Ms. Evelyn Lieberman, Deputy Chief of Staff at the time, believed that the transfer was necessary because Ms. Lewinsky was so persistent in her efforts to be near the President. Although Ms. Lieberman could not recall hearing any rumors linking her and the President, she acknowledged the President was vulnerable to these kinds of rumors. While Ms. Lewinsky tried to return to work in the White House, her absence was appreciated by those on the President's staff who wanted to protect him.

After she began her job at the Pentagon in April, there was no further physical contact with the President through the 1996 election and the remainder of that year. The two communicated by telephone and on occasion saw each other at public events. Their only attempt at a private visit in the Oval Office was thwarted because Ms. Lieberman was nearby. On December 17, she attended a holiday celebration at the White House and had a photograph made shaking hands with the President.

However, the evidence establishes that in 1997, Ms. Lewinsky was more successful in arranging visits to the White House. This was because she used the discreet assistance of Ms. Currie, the

President's secretary, to avoid the likes of Ms. Lieberman. Ms. Currie indicated she did not want to know the details of this relationship. Ms. Currie testified on one occasion when Ms. Lewinksy told her, "As long as no one saw us—and no one did—then nothing happened." Ms. Currie responded, "I don't want to hear it. Don't say any more. I don't want to hear any more."

Early on during their secret liaisons, the two concocted a cover story to use if discovered. Ms. Lewinksy was to say she was bringing papers to the President. The evidence will show that statement to be false. The only papers that she ever brought were personal messages having nothing to do with her duties or the President's. The cover story plays an important role in the later perjuries and the obstruction of justice.

Ms. Lewinksy stated that the President did not expressly instruct her to lie. He did, however, suggest, indeed, the "misleading" cover story. When she assured him that she planned to lie about the relationship, he responded approvingly. On the frequent occasions that she promised that she would "always deny" the relationship and "always protect him," for example, the President responded, in her recollection, "That's good," or something affirmative, not "Don't deny it."

The evidence will establish further that the two of them had, in her words, "a mutual understanding" that they would "keep this private, so that meant deny it and . . . take whatever appropriate steps needed to be taken." When she and the President both were subpoenaed in the Jones case, Ms. Lewinksy anticipated that "as we had on every other occasion and every other instance of this relationship, we would deny it."

In his grand jury testimony, President Clinton acknowledged that he and Ms. Lewinsky "might have talked about what to do in a nonlegal context" to hide their relationship and that he "might well have said" that Ms. Lewinsky should tell people she was bringing letters to him or coming to visit Ms. Currie. He always stated that "I never asked Ms. Lewinsky to lie."

But neither did the President ever say that they must now tell the truth under oath; to the contrary, as Ms. Lewinsky stated: "It wasn't as if the President called me and said, 'You know, Monica, you're on the witness list, this is going to be really hard for us, we're going to have to tell the truth and be humiliated in front of the entire world about what we've done,' which I would have fought him on probably," she said. "That was different. By not calling me and saying that, you know, I knew what that meant," according to Monica Lewinsky.

In a related but later incident that Mr. HUTCHINSON may refer to, Monica Lewinsky testified that President Clinton telephoned her at home around 2 o'clock or 3 o'clock in the morning on December 17, 1997—2:00 or 2:30 a.m. He told her that her name was on the list of possible witnesses to be called in the Paula Jones lawsuit. When asked what to do if she was subpoenaed, the President suggested that she could sign an affidavit. Ms. Lewinsky indicated that she was 100 percent sure that he had suggested that she might want to sign an affidavit. She understood his advice to mean that she might be able to execute an affidavit that would not disclose the true nature of their relationship.

When Ms. Lewinsky agreed to that false affidavit, she told the President by telephone that she would be signing it and asked if he wanted to see it before she signed it. According to Ms. Lewinsky, the President responded that he did not, as he had already seen about 15 others.

Concurrent with these events I just described, the evidence will further demonstrate that as Ms. Lewinsky attempted to return to work at the White House after the 1996 elections, she spoke with the President. According to Betty Currie, the President instructed Betty Currie and Marsha Scott, Deputy Director of Personnel, to assist in her return to the White House. In the spring of 1997, she met with Ms. Scott. She complained in subsequent notes to Ms. Scott and the President about no progress being made with her getting back to the White House. On July 3 of that year, she dispatched a more formal letter to the President—in fact, using the salutation, "Dear Sir"—and raising a possible threat that she might have to tell her parents about why she no longer had a job at the White House if they did not get her another job. She also indicated a possible interest in a job in New York at the United Nations. The President and Ms. Lewinsky met the next day in what Ms. Lewinsky characterized as a "very emotional" visit, including the President scolding her, that it was illegal to threaten the President of the United States. Their conversation eventually moved on to other topics, though primarily her complaining about his failure to get her a job at the White House.

Continuing with Ms. Lewinsky's effort to return to work near the President, there was a July 16 meeting and September 3 telephone call with Ms. Scott. On the evening of September 30, the President advised Ms. Lewinsky that he would have Chief of Staff Erskine Bowles help with a job search, and Bowles later passed this on to John Podesta, although each recalled their involvement occurring earlier in the year.

A few days later, however, her hopes of a job at the White House quickly ended. On October 6, she had a conversation with Linda Tripp, who told her that she would never return to the White House, according to a friend of hers on the staff. Learning this "secondhand" was, according to Ms. Lewinsky, the "straw that broke the camel's back." She decided to ask the President for a job in New York with the United Nations and sent him a letter to that effect on October 7.

During an October 11 meeting with the President, he suggested that she give him a list of New York companies which interested her. She asked if Vernon Jordan might also help. Five days later, she provided the President with her "wish list" and indicated that she was no longer interested in the U.N. position, although she did receive an offer on November 24 and declined it on January 5, 1998.

After this meeting with the President, arrangements were made through the President and Ms. Currie for Ms. Lewinsky to meet with Mr. Jordan. On the morning of November 5, 1997, Mr. Jordan spoke by telephone with the President about 5 minutes and later met with Ms. Lewinsky for the first time for about 20 minutes. According to Ms. Lewinsky, Mr. Jordan told her he had spoken with

the President, that she came highly recommended, and that "We're in business."

However, the evidence reflects that Mr. Jordan took no steps to help Ms. Lewinsky until early December of that year after she appeared on the witness list in the Jones case. Actually, Mr. Jordan testified in his grand jury testimony that he had no recollection of even having met Ms. Lewinsky on November 5.

When he was shown documentary evidence demonstrating that his first meeting with Ms. Lewinsky occurred in early November, he acknowledged that such meeting "was entirely possible." You can see that was not to be a high priority for Mr. Jordan at that time, until December.

For many months, Ms. Lewinsky had not been able to find a job to her satisfaction—even without the perceived "help" of various people. Then in December of 1997, something happened which caused those interested in finding Ms. Lewinsky a job in New York to intensify their search. Within 48 hours of her signing this false affidavit in the Paula Jones case, Ms. Lewinsky had landed a job with a prestigious Fortune 500 Company.

It is anticipated that attorneys for the President will present arguments which will contest much of the relationship with Monica Lewinsky. The President has maintained throughout the last several months that while there was no sexual relationship or sexual affair, in fact, there was some type of inappropriate, intimate contact with her. What has now been dubbed as "legal gymnastics" on the part of the President has made its appearance.

Other examples followed. Within his definition of the word "alone," he denies being alone with Ms. Lewinsky at any time in the Oval Office. He also questions the definition of the word "is"—it depends on what the word "is" means in how you answer a particular question. Further, we would expect the President to continue to disavow knowledge of why evidence detrimental to his defense in the Jones case was removed from Ms. Lewinsky's apartment and hidden beneath Ms. Currie's bed or knowledge of how Ms. Lewinsky found herself with an employment offer in New York virtually at the same time she finally executed an affidavit in the Jones case.

Unfortunately, for your search for the truth in these proceedings, the President continues today to parse his words and use "legal hairsplitting" in his defense. I cite for your consideration his Answer filed with this body just days ago. For instance:

One. Responding in part to the impeachment article I, the President persists in a wrongheaded fashion with his legal hairsplitting of the term "sexual relations," which permits him to define that term in such a way that in the particular salacious act we are talking about here, one person has sex and the other person does not. As a graduate of one of the finest law schools in America and as a former law professor and attorney general for the State of Arkansas, the President knows better. I have this statement here extracted out of the President's Answer to this proceeding.

Two. Responding to both articles of impeachment, the President now would have you believe that he "was not focusing" when his attorney, Bob Bennett, was objecting during the deposition and attempting to cut off a very important line of questioning of the

President by representing to Judge Wright that Ms. Lewinsky's affidavit proved that there is no need to go into this testimony about the President's life. He said that this affidavit proves that "there is absolutely no sex of any kind, in any manner, shape or form." Remember that this is the same President who now pleads that he lost his focus during this very important part of this deposition. This is the very same President who is renowned for his intelligence and his ability "to compartmentalize," to concentrate and focus on whatever matter is at hand. And now he comes before this Senate, to each one of you, in his Answer, by and through his attorneys, and pleads that he simply wasn't paying attention at this very important point during his own deposition. In Tennessee, we have a saying for situations like that: "That dog won't hunt."

Three. In his further response to article I, the President effectively admits guilt to obstruction. As I read this, his pleadings refer to the President himself, and he states that he, the President, "truthfully explained to the grand jury his efforts to answer the questions in the Jones deposition without disclosing his relationship with Ms. Lewinsky." So he said he did answer the questions in the Jones deposition in a way so as not to disclose his relationship with Ms. Lewinsky. At the bottom of the same page, he denies that he attempted "to impede the discovery of evidence in the Jones case." Think about this with me for a minute. Basically, the purpose of the Jones deposition of the President was to secure truthful testimony about these kinds of "pattern and practice" witnesses, and therein discover the likes of Monica Lewinsky. That is the purpose of being there. The President admitted in his Answer that he purposely answered questions so as not to disclose his relationship with Ms. Lewinsky. Said another way, he intentionally answered questions to avoid the discovery of one of these female employees with whom he was sexually involved. That is precisely, folks, what impeding the discovery of evidence is.

I ask you, if you get an opportunity, to look at this very closely.

Four. In his answer to article II, the President "denies that he encouraged Monica Lewinsky to execute a false affidavit in the Jones case." When everything is said and done, Ms. Lewinsky had no motivation, no reason whatsoever to want to commit a crime by willfully submitting a false affidavit with a court of law. She really did not need to do this at that point in her life, but this 20-something-year-old young lady was listening to the most powerful man in the United States, whom she greatly admired, hearing him effectively instruct her to file a false affidavit to avoid having to testify about their relationship. And in order to do that, she had to lie about the physical aspects of their relationship. According to her, the President didn't even want to see that actual affidavit because he had seen 15 more just like it and as such he knew what it would be.

Five. In an additional response to article II, the President answers and asserts that "he believed that Ms. Lewinsky could have filed a limited and truthful affidavit that might have enabled her to avoid having to testify in the Jones case." That is an incredible statement. That is an incredible statement given the fact that the President knew firsthand of the extent of their sexual relationship, and he also knew that the Jones discovery efforts were specifically

after that type of conduct. Even with the best of the legal hair-splitting, it is still difficult to envision a truthful affidavit from Ms. Lewinsky that could have skirted this issue enough to avoid testifying.

And if you really think the President had this belief, don't you think he would have accepted Ms. Lewinsky's offer to review her affidavit and perhaps share this bit of wisdom he had with her before she signed it and lied? After all, in this answer he just filed, he says he had an out for her, a way for her to have the best of both worlds—not to have to lie and still avoid testifying in the Jones case. Why didn't he share that with her when she gave him the opportunity if he in fact had such an idea? I suggest that perhaps that is a recent idea.

Even if, for some reason, you don't believe Ms. Lewinsky offered to share that affidavit with him, don't you think it still would have been in the President's best interest to give Ms. Lewinsky his thoughts before she violated the law with a completely false affidavit?

Now, indeed, is the time to stop the legal gymnastics and hair-splitting and deal with these charges and facts appropriately.

As a House manager, I believe I can speak for all of us out of a sense of fairness, and again request that we and the President be permitted to call witnesses. I submit that the state of the evidence is such that unless and until the President has the opportunity to confront and cross-examine witnesses like Ms. Lewinsky, and himself, to testify if he desires, there could not be any doubt of his guilt on the facts. A reasonable and impartial review of the record as it presently exists demands nothing less than a guilty verdict.

While it has been the consistent defense of the White House to be inconsistent, it still comes as something of a surprise that the President has not made a stronger case for the calling of witnesses. Before now, he has aggressively sought the opportunity to challenge the truth and veracity of witnesses in these impeachment proceedings. During the hearings in the House, which many believe are analogous to a grand jury proceeding, the President's defenders and his attorneys consistently complained of the failure to call witnesses and the lack of fairness and due process. Almost every day, there were partisan attacks from the White House and its emissaries who were dispatched throughout the media talk shows with the same complaints of no witnesses.

And always, our measured response was a calm assurance that there would be witnesses called during the trial phase in the Senate. Is there any doubt that our forefathers intended a two-step impeachment proceeding?

The House would function as the grand jury and determine whether to charge—to impeach. Then you, as the trier of fact, would function as the jury to try the case and weigh the testimony of the fact witnesses. In recent days, some have publically asserted that the House is hypocritical because it didn't call some of the fact witnesses it now asks to call in the Senate. For the record, it must be noted that the House Judiciary Committee, out of an abundance of fairness, did allow the President's defense team 30 hours in

which to present any witnesses that they could have chosen and they could have examined.

But any allegation of hypocrisy certainly appears to miss the point that the writers of our Constitution never contemplated two separate trials for an impeachment proceeding. But now we would respectfully suggest is the time for witnesses.

All Americans, including the President, are entitled to enjoy a private family life, free from public or governmental scrutiny. But the privacy concerns raised in this case are subject to limits, three of which I will briefly discuss here.

The first limit was imposed when the President was sued in Federal court for alleged sexual harassment. The evidence in such litigation is often personal. At times, that evidence is highly embarrassing for both plaintiff and defendant. As Judge Wright noted at the President's January 1998 deposition, "I have never had a sexual harassment case where there was not some embarrassment." Nevertheless, Congress and the Supreme Court have concluded that embarrassment-related concerns must give way to the greater interest in allowing aggrieved parties to pursue their claims. Courts have long recognized the difficulties of proving sexual harassment in the work place, inasmuch as improper or unlawful behavior often takes place in private. To excuse a party who lied or concealed evidence on the ground that the evidence covered only "personal" or "private" behavior would frustrate the goals that Congress and the courts have sought to achieve in enacting and interpreting the Nations's sexual harassment laws. That is particularly true when the conduct that is being concealed—sexual relations in the workplace between a high official and a young subordinate employee—itself conflicts with those goals.

The second limit was imposed when Judge Wright required disclosure of the precise information that is in part the subject of this hearing today. A Federal judge specifically ordered the President, on more than one occasion, to provide the requested information about relationships with other women, including Ms. Lewinsky. The fact that Judge Wright later determined that the evidence would not be admissible at trial, and still later granted judgment in the President's favor, does not change the President's legal duty at the time he testified. Like every litigant, the President was entitled to object to the discovery questions and to seek guidance from the court if he thought those questions were improper. But having failed to convince the court that his objections were well founded, the President was duty bound to testify truthfully and fully. Perjury and attempts to obstruct the gathering of evidence can never be an acceptable response to a court order, regardless of the eventual course or outcome of the litigation.

The Supreme Court has spoken forcefully about perjury and other forms of obstruction of justice: "In this constitutional process of securing a witness' testimony, perjury simply has no place whatever. Perjured testimony is an obvious and flagrant affront to the basic concepts of judicial proceedings. Effective restraints against this type of egregious offense are therefore imperative."

The insidious effects of perjury occur whether the case is civil or criminal. Only a few years ago, the Supreme Court considered a false statement made in a civil administrative proceeding: "False

testimony in a formal proceeding is intolerable. We must neither reward nor condone such a 'flagrant affront' to truth-seeking function of adversary proceedings . . . Perjury should be severely sanctioned in appropriate cases." Stated more simply, "perjury is an obstruction of justice."

The third limit is unique to the President. "The Presidency is more than an executive responsibility. It is the inspiring symbol of all that is highest in American purpose and ideals." As the head of the Executive Branch, the President has the constitutional duty to "take Care that the Laws be faithfully executed." The President gave his testimony in the Jones case under oath and in the presence of a Federal judge, a member of a co-equal branch of government; he then testified before a Federal grand jury, a body of citizens who had themselves taken an oath to seek the truth. In view of the enormous trust and responsibility attendant to his high Office, the President has a manifest duty to ensure that his conduct at all times complies with the law of the land.

In sum, perjury and acts that obstruct justice by any citizen—whether in a criminal case, a grand jury investigation, a congressional hearing, a civil trial or civil discovery—are profoundly serious matters. When such acts are committed by the President of the United States, those acts are grounds for conviction and removal from his Office.

The CHIEF JUSTICE. The Chair recognizes the majority leader.

Mr. LOTT. Mr. Chief Justice, I ask unanimous consent that there now be a recess of the proceedings for 15 minutes.

The CHIEF JUSTICE. Is there objection?

Mr. Manager BRYANT. Mr. Chief Justice, I have just about 1 minute and I will conclude.

Mr. LOTT. I withhold my request.

The CHIEF JUSTICE. Very well.

Mr. Manager BRYANT. Thank you.

As I reach the conclusion of my presentation, the time line is now in December of 1997. Following her November 5 meeting with Mr. Jordan, Ms. Lewinsky had no communication with him or the President for a month. Then in early December, the parties in the Jones case exchanged witness lists and Ms. Lewinsky was scheduled as a potential witness by the Jones attorneys. On or about that same day, Ms. Lewinsky attempted to make an uninvited visit to the White House and later that day was allowed in by the President. But it was during this time, in December of 1997, that some of the seams began to unravel for the President.

I will conclude my remarks at this point and thank the Chief Justice and the Members of the Senate for their careful attention. My colleague from Arkansas, Mr. HUTCHINSON, will follow me now or at the end of any recess as may be necessary.

RECESS

Mr. LOTT. Mr. Chief Justice, my apologies to the manager for the interruption at the end of his remarks.

I renew my request of unanimous consent to take a 15-minute recess.

The CHIEF JUSTICE. In the absence of an objection, it is so ordered.

[Thereupon, at 3:07 p.m., the Senate, sitting as a Court of Impeachment, recessed until 3:30 p.m.]

The CHIEF JUSTICE. The majority leader is recognized.

Mr. LOTT. I believe, Mr. Chief Justice, we are prepared now to go forward with the next manager's presentation.

The CHIEF JUSTICE. Very well. The Chair recognizes Manager HUTCHINSON.

Mr. Manager HUTCHINSON. Mr. Chief Justice, Senators, I am ASA HUTCHINSON, a Member of Congress from the Third Congressional District of Arkansas. I am grateful for this opportunity, although it comes with deep regret, to be before you. I do want to tell you in advance that we have presented to you, on your tables, a selection of charts that I will be referring to here so everyone will have the advantage of being able to see at least in some fashion the charts to which I will be referring. And we will have the charts here as well.

This is certainly a humbling experience for a smalltown lawyer. I learned to love and to respect the law trying cases in the courtrooms of rural Arkansas. The scene is different in this setting, in this historic Chamber with the Chief Justice presiding and Senators sitting as jurors. But what is at stake remains the same.

In every case heard in every courtroom across this great country, it is the truth, it is justice, it is the law that is at stake. In this journey on Earth, there is nothing of greater consequence to devote our energies to than the search for the truth, to pursue equal justice, and to uphold the law. It is for those reasons that I serve as a manager. And as you, I hope that I can help in some way to bring this matter to a conclusion for our country. This afternoon I will be discussing the evidence and the testimony from witnesses that we do hope to call, and during my presentation I will be focusing on the evidence that demonstrates obstruction of justice under article II.

You might wonder, well, why are we going to article II before we have covered article I on perjury? And the answer is that in a chronological flow, article II, the obstruction facts, precedes much of the perjury allegations. And so, following my presentation, Manager ROGAN will present article I on perjury.

The presentation I make will be based upon the record, the evidence, and the facts that have been accumulated. I want you to know that I am going to be presenting those facts, and from time to time I will argue those facts. I believe they are well supported in the record, but I urge each of you, if you ever find anything that you question, to search the record and verify the facts because I do not intend to misrepresent anything to this body. In fact, we will be submitting to each of your offices my presentation with annotations to the record, to the grand jury transcripts which will tie in the facts that I present to you. Again, I believe and trust you will find they are well supported.

So let's start with obstruction of justice. Later on, there will be a full discussion of the law on obstruction of justice, but for our purposes, it is simply any corrupt act or attempt to influence or impede the proper functioning of our system of justice. It is a criminal offense, a felony, and it has historically been an impeachable offense.

Let me first say, it is not a crime nor an impeachable offense to engage in inappropriate personal conduct, nor is it a crime to obstruct or conceal personal embarrassing facts or relationships. It might be offensive, but there are no constitutional consequences. But as we go through the facts of the case, the evidence will show in this case that there was a scheme that was developed to obstruct the administration of justice, and that is illegal. And the obstruction of justice is of great consequence and significance to the integrity of our Nation when committed by anyone but particularly by the Chief Executive of our land, the President of the United States.

Mr. BRYANT took us factually up to a certain point pertaining to the job search. This is chart No. 1 that you have before you. This puts it in perspective a little bit. Just for a brief review, go back in the calendar, back into October. That is when Ms. Lewinsky sends the President her wish list of jobs. And then shortly after that, Ms. Currie faxes Lewinsky the resume to Ambassador Richardson, and Ambassador Richardson gets involved in the job search.

October 30, the President promised to arrange a meeting between Lewinsky and Jordan. This was set up in November. It was actually November 5. But preceding that, there was a job offer at the United Nations extended to Ms. Lewinsky. Ms. Lewinsky decided that she was not interested in a job at the United Nations; she wanted to go into the private sector. And so that was the purpose on November 5 of the meeting between Jordan and Lewinsky. That is when Mr. Jordan says, "We're in business." But the facts will show that there was nothing really done in November, and that is when I will get a little bit more into my presentation, and then I will get into December when some things happened there that picked up speed on this issue.

The obstruction, for our purposes, started on December 5, 1997, and that is when the witness list from the Paula Jones case was faxed to the President's lawyers. At that point, the wheels of obstruction started rolling, and they did not stop until the President successfully blocked the truth from coming out in the civil rights case.

These acts of obstruction included attempts to improperly influence a witness in a civil rights case—that is, Monica Lewinsky—the procurement and filing of a false affidavit in the case; unlawful attempts to influence the testimony of a key witness, Betty Currie; the willful concealment of evidence under subpoena in that case, which are the gifts of December 28; and illegally influencing the testimony of witnesses—that is, the aides who testified before the grand jury—before the grand jury of the United States. Each of these areas of obstruction will be covered in my presentation today.

As I said, it began on Friday, December 5, when the witness list came from the Paula Jones case. Shortly thereafter, the President learned that the list included Monica Lewinsky. This had to be startling news to the President because if the truth about his relationship with a subordinate employee was known, the civil rights case against him would be strengthened and it might have totally changed the outcome.

But to compound the problem, less than a week later, Judge Wright, a Federal district judge in Arkansas, on December 11,

issued an order, and that order directed that the President had to answer questions concerning other relationships that he might have had during a particular timeframe with any State or Federal employee. And when I say "relationships," I am speaking of sexual relationships. So Judge Wright entered the order that is not in your stack, but I have it here. It was filed on December 11 in the district court in Arkansas and directs the President that he has to answer those questions within a timeframe, as Mr. BRYANT said, which is typical in a civil rights case of this nature.

The White House knew that Monica was on the witness list. The President knew it was likely she would be subpoenaed as a witness and that her truthful testimony would hurt his case.

What did the President do? What he had to do was to make sure Monica Lewinsky was on his team and under control. And then on December 17, the President finally called Ms. Lewinsky to let her know she was on the list. This was a call between 2 a.m. and 2:30 a.m. in the morning.

Now, what happened in the time between the President learning Monica Lewinsky was on the list and when he notified her of that fact on December 17 is very important. The President, during that timeframe, talked to his friend, his confidante, and his problem-solver, Vernon Jordan. Mr. Jordan had come to the President's rescue on previous occasions. He was instrumental in securing consulting contracts for Mr. Webb Hubbell while Mr. Hubbell was under investigation by the independent counsel.

Let me parenthetically go to that point, right before Mr. Hubbell announced his resignation from the Justice Department.

During that timeframe, there was a meeting at the White House in which the President, the First Lady, and others were present. After that meeting, Vernon Jordan agreed to help obtain financial assistance for Mr. Hubbell. Mr. Jordan then introduced Mr. Hubbell to the "right people." The introduction was successful and Mr. Hubbell obtained a $100,000 contract. The "right people" that Mr. Jordan contacted happened to be the same "right people" for both Mr. Hubbell and ultimately for Monica Lewinsky, which is the parent company of Revlon. So the President was aware that Mr. Jordan had the contacts and the track record to be of assistance to the President in delicate matters.

Now let's go back a little. Monica Lewinsky had been looking for a good-paying and high-profile job in New York, since the previous July, as I pointed out.

She had been offered a job at the United Nations, but she wanted to work in the private sector. She was not having much success, and then in early November it was Betty Currie who arranged a meeting with Vernon Jordan, which was ultimately on November 5. At this meeting, Ms. Lewinsky met with Mr. Jordan for about 20 minutes.

Now, let's refer to Mr. Vernon Jordan's grand jury testimony on that meeting that occurred on November 5. And you have that, and it should be your chart No. 2, or exhibit 2.

As Mr. Jordan testified before the Federal grand jury on March 3, 1998, in reference to the November 5 meeting, he said:

> I have no recollection of an early November meeting with Ms. Monica Lewinsky. I have absolutely no recollection of it and I have no record of it.

He goes on to testify, at page 76 of the grand jury testimony.

Question:

Is it fair to say that back in November getting Monica Lewinsky a job on any fast pace was not any priority of yours?

His answer:

I think that's fair to say.

Now, let's stop there for a moment. What happened as a result of this meeting? No action followed whatsoever. No job interviews were arranged and there were no further contacts with Mr. Jordan. Mr. Jordan made no effort to find a job for Ms. Lewinsky for over a month. Indeed, it was so unimportant to him that he "had no recollection of an early November meeting," and, in fact, he testified finding her a job was not a priority. And then you will see that during this timeframe the President's attitude was exactly the same.

And so look at the same exhibit 2, the last item on that chart, where it refers to Monica Lewinsky's grand jury testimony. And there she is referring to a December 6 meeting with the President:

I think I said that . . . I was supposed to get in touch with Mr. Jordan the previous week and that things did not work out and that nothing had really happened yet [on the job front].

And the question was:

Did the President say what he was going to do?

The answer:

I think he said he would—you know, this was sort of typical of him, to sort of say, "Oh I'll talk to him. I'll get on it."

So you can see from that that it was not a high priority for the President either. It was: Sure, I'll get to that. I will do that.

It was clear from Monica Lewinsky that nothing was happening.

But then the President's attitude suddenly changed. What started out as a favor for Betty Currie dramatically changed after Ms. Lewinsky became a witness; the judge's order was issued, again, on December 11. And at that time, the President talked personally—personally—to Mr. Jordan and requested his help in getting Ms. Lewinsky a job. And that would be, again, back on exhibit 2 on that chart, the third item of testimony there. Back to Mr. Jordan, his grand jury testimony, May 5, 1998.

The question is:

But what is also clear is that as of this date, December 11th, you are clear that at that point you had made a decision that you would try to make some calls to help get her a job.

His answer:

There is no question about that.

Let's look at the chain of events. The witness list came in. The judge's order came in. That triggered the President to action. And the President triggered Vernon Jordan into action. That chain reaction here is what moved the job search along.

Now, if we had Mr. Jordan on the witness stand—I hope to be able to call Mr. Jordan—you would need to probe where his loyalties lie, listen to the tone of his voice, look into his eyes and deter-

mine the truthfulness of his statements. You must decide whether he is telling the truth or withholding information.

And so let's go to exhibit 3 in your booklet. Again, recalling Mr. Jordan, he testifies about that meeting. He testifies, in his March 3, 1998, grand jury testimony:

> I am certain after the 11th that I had a conversation with the President and as a part of that conversation I said to him that Betty Currie had called me about Monica Lewinsky. And the conversation was that he knew about her situation which was that she was pushed out of the White House, that she wanted to go to New York and he thanked me for helping her.

Remember what else happened on that day, again, the same day that Judge Wright ruled that the questions about other relationships could be asked by the Jones attorneys.

Now, let's go back again to Mr. Jordan's testimony. What does he say about the involvement of the President of the United States in regard to these jobs? You look at exhibit 4. That is in your booklet. This is, again, Vernon Jordan's grand jury transcript of June 9, 1998.

Now, the question is on a different issue. The question is about why did he tell the White House that Frank Carter—Frank Carter was the attorney for Monica Lewinsky that Vernon Jordan arranged and introduced to Monica Lewinsky. He was hired. And at whatever point he was terminated, then Vernon Jordan notified the President. So the question relates to that:

> Why are you trying to tell someone at the White House that this has happened, [Carter had been fired]?

Answer:

> Thought they had a right to know.

Question:

> Why?

And here is the answer that is critical for my point:

> The President asked me to get Monica Lewinsky a job. I got her a lawyer. The Drudge Report is out and she has new counsel. I thought that was information that they ought to have. . . .

"The President asked me to get Monica Lewinsky a job." Clear, straightforward testimony; no doubt about it.

Then go on down to page 58 of his grand jury testimony of June 9.

The question:

> Why did you think the President needed to know that Frank Carter had been replaced?

Answer:

> Information. He knew that I had gotten her a job, he knew that I had gotten her a lawyer. Information. He was interested in this matter. He is the source of it coming to my attention in the first place.

"He is the source of it coming to my attention in the first place." Remember, he had already met with Betty Currie. Nothing was happening in the November timeframe. Nothing was happening. Vernon Jordan—it was not a priority. Then the President of the United States called him and it became a priority. And that is who he was acting for in trying to get Monica Lewinsky a job.

At this point we do not know all that the President was telling Vernon Jordan, but we do know that there were numerous calls back and forth between Mr. Jordan and the President. There were numerous calls being made by Mr. Jordan on behalf of Monica Lewinsky searching for a job, and that despite the fact that Monica Lewinsky did not know that she was witnessed—she did not know she was a witness—the President knew that she was a witness during his intensified efforts to get her a job.

Now, the President's counselors have made a defense that the job search started before Monica Lewinsky was a witness and there was nothing wrong with that. My response to that is, it is true there is nothing wrong with a public official, under the right circumstances, helping someone get a job. And what might have started out being innocent, if you accept that argument, crossed the line whenever it was tied and interconnected with the President's desire to get a false affidavit from Monica Lewinsky, and whenever the job is out there and preparing the false affidavit, you will see that they are totally interconnected, intertwined, interrelated; and that is where the line has crossed into obstruction.

For example, when the President was waiting on Ms. Lewinsky to sign the false affidavit in the Jones case during the critical time in January, a problem developed. The job interviews were unproductive, despite the numerous calls by Mr. Jordan. On one particular day, Monica called Mr. Jordan and said the interview with Revlon did not go well. Mr. Jordan, what did he do? He picked up the phone to the CEO of—the president of the company, Mr. Perelman, to, as Vernon Jordan testified, "make things happen—if they could happen." That is the request from Mr. Jordan to the CEO of a company, after a job interview with Monica Lewinsky did not go well.

What happened? Things happened. He made things happen. Monica Lewinsky got a job. The affidavit was signed and the President was informed by Mr. Jordan, through Betty Currie, that the mission was accomplished.

The question here is not why did the President do a favor for an ex-intern, but why did he use the influence of his office to make sure it happened? The answer is that he was willing to obstruct, impede justice by improperly influencing a witness in order to protect himself in a civil rights case.

The next step in the obstruction is the false affidavit. This is directly related to the job mission. The President needed the signature of Monica Lewinsky on the false affidavit, and that was assured by the efforts to secure her a job. Again, the President brought Ms. Lewinsky into the loop on December 17. Over 10 days after the witness list was received by the President, the President was ready to tell Monica the news.

That timeframe is important. He gets the witness list. He could have called Monica Lewinsky immediately, but he needed 7 days because he needed to make sure the job situation was in gear. And in fact, the day after, if you look back on exhibit 1, you will see that the day after the December 17 timeframe that she was informed that she was on the witness list, the next day she already had lined up job interviews for her. So she felt confident. But she was notified on December 17. Between 2 and 2:30 a.m., her phone

rang. It was the President of the United States. The President said that he had seen the witness list in the case and her name was on it. Ms. Lewinsky asked what she should do if subpoenaed, and the President responded, "Well, maybe you can sign an affidavit."

Well, how would this work? Both parties knew that the affidavit would need to be false and misleading in order to accomplish the desired result. Clearly, truthful testimony by Monica Lewinsky would make her a witness, would not keep her away from testifying. Only a false affidavit would avoid the deposition.

So look at what I have marked as exhibit 4.1, which is just a review of the key dates on this job search. Again, November 5 was the first meeting between Jordan and Ms. Lewinsky. In November nothing happened. According to Jordan, "not a high priority." On December 5, the President receives the witness list. On the 11th, things intensify with Judge Wright's order. The 11th, the President talks to Mr. Jordan about the job for Monica. He gets into action. On the 17th, they are ready to tell Monica that she is on the witness list. And then, on the 19th, she is actually served with a subpoena. Again, remember, after she was finally notified, it was the next day that she had the job interviews.

Now we will spend some time on the December 17 conversation, the day that Monica Lewinsky was notified that she was on the witness list. During that conversation, the President had a very pointed suggestion for Ms. Lewinsky that left no doubt about his purpose and the intended consequences. He did not say specifically, "Go in and lie." This is something that you will hear, and Monica Lewinsky testified in her grand jury testimony: "The President never told me to lie."

How do you tell people to lie? You can tell them the facts that they can use that would, in substance, be a false statement or you can say, "Go in and lie and make up your own false testimony." The President chose to give her the ideas as to what she could testify to that would be false, but he never said the words, "You need to go in and lie." So what he did say to her was, "You know, you can always say you were coming to see Betty or that you were bringing me letters."

That, ladies and gentlemen of the Senate, is a false representation, is a false statement that he is telling Ms. Lewinsky to utter. Remember, at this point the President knows she is a witness, and what does he do? As evidenced by the testimony of Monica Lewinsky, he encourages her to lie: "You can always say you were coming to see Betty or that you were bringing me letters."

It should also be remembered that the President, when questioned about encouraging Monica Lewinsky to lie, has denied these allegations and therefore there is certainly a conflict in the testimony. It is our belief that Ms. Lewinsky's testimony is credible and she has the motive to tell the truth because of her immunity agreement with the independent counsel, where she gets in trouble only if she lies, whereas the President has the motive to cover up and to testify falsely.

In order to understand the significance of this statement made by the President, it is necessary to recall the cover stories that the President and Ms. Lewinsky had previously concocted in order to deceive those people who might inquire. It was to deceive those

people that they worked with. The difference in the initial cover stories, though, to protect the President and Monica from an embarrassing personal relationship, from friends and coworkers and the media, now is in a different arena, with the pending civil rights case and Ms. Lewinsky being on the witness list.

Despite the legal responsibilities, the President made the decision to continue the pattern of lying which ultimately became an obstruction of the administration of justice. We are still on December 17, when the President called Monica at 2 a.m. on that particular day to tell her she was on the witness list, to remind her of the cover stories. Monica Lewinsky testified, when the President brought up the cover story, she understood that the two of them would continue their preexisting pattern of deception, and it became clear that the President had no intention of making his relationship with a subordinate Federal employee an issue in that civil rights case, no matter what the Federal courts told him he needed to answer. And he used lies, deceit, and deception to carry out that purpose.

It is interesting to note that the President, when he was asked by the grand jury whether he remembered calling Monica Lewinsky at 2 a.m. on December 17, responded, "No, sir, I don't, but it is quite possible that that happened." When he was asked whether he encouraged Monica Lewinsky to continue the cover stories of coming to see Betty or bringing letters, he answered, "I don't remember exactly what I told her that night."

This is not a denial, and therefore I believe you should accept the testimony of Monica Lewinsky. If you say in your mind, well, I'm not going to believe her, then you should first give us the opportunity to present this witness so that you as jurors can fairly and honestly determine her credibility.

As expected, 2 days later, on December 19, Ms. Lewinsky received a subpoena to testify in the Jones case. This sets about an immediate flurry of activity. There are a series of telephone calls between Ms. Lewinsky, Vernon Jordan, the President, and his staff. You will see this pattern of telephone calls repeated and generated at any point in time when it appears that the truth may be told in the civil rights case.

Now, let's look at exhibit 5, which is the activity on Friday, December 19. This is the day that Monica Lewinsky is served with a subpoena. Now, after Mr. Jordan is notified that Monica Lewinsky is served with a subpoena, what does he do? In the 3:51–3:52 notation, Jordan telephones the President and talks to Debra Schiff, his assistant. The subpoena is issued. Monica calls Jordan and Jordan immediately calls the President. "Lewinsky meets with Jordan and requests that Jordan notify the President about her subpoena." This is at 4:47 p.m.

Presumably, in the middle of that meeting, at 5:01 p.m., the President of the United States telephones Mr. Jordan and Jordan notifies the President about Ms. Lewinsky's subpoena.

Then that is whenever he arranged for Ms. Lewinsky's attorney—"Jordan telephones attorney Carter"—for representation, and that night Vernon Jordan goes to the White House to meet privately with the President on these particular issues.

Now, in that meeting—and I am speaking of the meeting that happened late that night at the White House—Mr. Jordan told the President again that Ms. Lewinsky had been subpoenaed and related to the President the substance and details of his meeting with Ms. Lewinsky. It wasn't a casual consideration; the details were discussed, including her fascination with the President and other such issues.

This led Mr. Jordan to ask the President about his relationship with Ms. Lewinsky, and the response by the President of the United States was the first of many denials to his friends and aides. The President stated in his deposition that he did not recall that meeting. But you should remind yourselves of the testimony and the description provided by Vernon Jordan when he said, "The President has an extraordinary memory." In fact, we all know that he is world famous for that memory.

Now, the subpoena had been delivered, but the testimony of Monica Lewinsky was not scheduled until January 23, and the President's deposition, which was even more critical, was not scheduled until January 17. So the President and his team had some time to work. The work was not the business of the Nation; it was the distraction and self-preservation in the civil rights case.

Under the plan, Mr. Jordan would be the buffer; he would obtain an attorney—Mr. Carter—and that attorney would keep Mr. Jordan informed on the progress of the representation, including reviewing any copy of the affidavit, knowing about the motion to quash, and the general progress of the representation. All along the way, when Mr. Jordan gets information, what does he do with that? Mr. Jordan keeps the President informed both about the affidavit and the prospects of the job in New York, for which Ms. Lewinsky was totally dependent on the help of her friends in high places.

Let me go back again. There is nothing wrong with helping somebody get a job. But we all know there is one thing forbidden in public office: We must avoid quid pro quo, which is: This is for that. But Vernon Jordan testified he kept the President informed on the status of the false affidavit, the job search, and the status of Ms. Lewinsky's representation. Why? Is this just idle chatter with the President of the United States or are these matters the President is vitally interested in and, in fact, coordinated? Mr. Jordan answers this question himself on page 25 of his grand jury testimony, where he testified, "I knew the President was concerned about the affidavit and whether or not it was signed." That was his March 5, 1998, grand jury testimony. The President was concerned not just about the affidavit but specifically about whether it was signed.

The President knew that Monica Lewinsky was going to make a false affidavit. He was so certain of the contents that when Monica Lewinsky asked if he wanted to see it, he told her no, that he had seen 15 of them. Besides, the President had suggested the affidavit himself, and he trusted Mr. Jordan to be certain to keep things under control. In fact, that was one of the main purposes of Mr. Jordan's continued communication with Monica Lewinsky's attorney, Frank Carter.

Even though Mr. Jordan testifies at one point he never had any substantive discussions on the representation with Mr. Carter, he contradicts himself in his March 3 grand jury testimony where he states:

> Mr. Carter at some point told me—this is after January—that she had signed the affidavit, that he had filed a motion to quash her subpoena and that—I mean, there was no reason for accountability, but he reassured me that he had things under control.

Mr. Jordan was aware of the substance of the drafting of the affidavit, the representation, the motion to quash, and even had a part in the redrafting. This was clearly important to Mr. Jordan and clearly important to the President.

Now, let's go to the time when the false affidavit was actually signed, January 5, 1998. These will be exhibits 7, 8, and 9 in front of you. Let's go to January 5. This is sort of a summary of what happened on that day. Ms. Lewinsky meets with her attorney, Mr. Carter, for an hour. Carter drafts the affidavit for Ms. Lewinsky on the deposition. In the second paragraph, Ms. Lewinsky telephones Betty Currie, stating that she needs to speak to the President, that this is about an important matter; specifically, that she was anxious about something she needed to sign—an affidavit. Frank Carter drafts the affidavit she is concerned about. She calls the President. The President returns Ms. Lewinsky's call.

Big question: Should the President return Ms. Lewinsky's call? He does, that day, quickly. Ms. Lewinsky mentions the affidavit she is signing and offers to show it to the President. That is where he says no, he had seen 15 others.

Let's go to the next day. The next exhibit is January 6. On this particular day, Ms. Lewinsky picks up the draft affidavit. At 2:08 to 2:10 p.m., she delivers that affidavit. To whom? Mr. Jordan. That is after she got it. She delivers it to Jordan. And then, at 3:26 p.m., Mr. Jordan telephones Mr. Carter. At 3:38, Mr. Jordan telephones Nancy Hernreich of the White House. At 3:48, he telephones Ms. Lewinsky about the draft affidavit, and, at 3:49, you will see in red that both agree to delete a portion of the affidavit that created some implication that maybe she had been alone with the President.

So Mr. Jordan was very involved in drafting the affidavit and the contents of that.

And then at 4:19, presumably in response to some of the calls by Jordan earlier in the day, the President telephones Mr. Jordan and they have a discussion. And then Mr. Jordan telephones Carter and the conversations go back and forth. At the end of the day, Mr. Jordan telephones the White House. So the affidavit is still in the drafting process.

Let's go to the next day, exhibit 9. Monica signs the affidavit here. At 10 a.m., Ms. Lewinsky signs a false affidavit in Mr. Carter's office. Then she delivers the signed affidavit to Mr. Jordan. And then what does he do? The usual. At 11:58, Mr. Jordan telephones the White House. At 5:46, Mr. Jordan telephones the White House. At 6:50, Mr. Jordan telephones the White House and tells the President that Ms. Lewinsky signed the affidavit.

Is this important information for the President, to know he was vitally interested in it?

The next day—exhibit 10—January 8. After it is signed, what is important? It was the other part of the arrangement, that she has the job interview with MacAndrews in New York. She had that job interview. The only problem was that it went poorly, very poorly. So at 4:48 p.m. on this particular day, Ms. Lewinsky telephones Jordan and advises that the New York interview went "very poorly."

What does Mr. Jordan do? He telephones Ron Perelman, the CEO of Revlon, the subsidiary of MFH, to make things happen, if they could happen. What does he do next? Jordan telephones Ms. Lewinsky, saying, "I'm doing the best I can to help you out." And they set up another interview for the next day. Jordan telephones the White House Counsel's Office, and, in the evening, Revlon in New York telephones Ms. Lewinsky to set up a follow-up interview. They said the first interview didn't go well, but because Mr. Jordan intercedes—and why? Because the false affidavit has been signed and he wants to make sure this is carried out. At 9:02 p.m., Ms. Lewinsky telephones Jordan about the Revlon interview in New York, and presumably it went better on that particular day.

Then on January 9—exhibit 11—it is confirmed that she has the job. Lewinsky is offered the Revlon job in New York and accepts.

Lewinsky telephones Jordan. And then, at 4:14, Jordan notifies Currie, calls Betty Currie, and says "Mission accomplished" and requests that she tell the President. Jordan notifies the President of Lewinsky's job offer and says, "Thank you, very much, Mr. President." And then that evening the President telephones Currie, and so on. But the President is notified that the job has been secured—"mission accomplished."

Let me ask you a question, after I have gone through these exhibits. Would Mr. Jordan have pushed for a second interview without cooperation on the affidavit? Would Monica Lewinsky have received the support and secured the job if she had said, "I don't want to sign an affidavit; I am just going to go in there and tell the truth; whatever they ask me, I am going to answer; I am going to tell the truth." Does anyone in this room believe that she would have been granted the job if Mr. Jordan had not made that call to get that second interview, if she had not had help from her friends in high places?

Now the affidavit has been signed. The job is secure. Monica Lewinsky is on the team, and the President of the United States is armed for the deposition.

So let's move there.

Just how important was Monica Lewinsky's false affidavit to the President's deposition? Let's look. What did the President's attorney, Robert Bennett, say about that affidavit to the Federal judge during the deposition? That false affidavit allowed Mr. Bennett, the attorney for Mr. Clinton, when talking about the question of the relationship between the President and Ms. Lewinsky, to assert that " . . . there is absolutely no sex of any kind in any manner, shape or form with President Clinton. . . ."

That is a statement of Robert Bennett—his representation to the court about that relationship. It is a representation that he had to later, probably based upon his own professional embarrassment, withdraw and to correct that inaccurate part of the record.

When questioned by his own attorney in the deposition, the President stated specifically the key paragraph of Ms. Lewinsky's affidavit was "absolutely true."

Paragraph 8 of her affidavit states:

> I have never had a sexual relationship with the President. . . .

If it enters your mind at this point as to what was meant by "sexual relationship," please remember that this affidavit was drafted upon a common understanding of that phrase at that point and not based upon any definition used in the deposition of the President.

I am sure it was the President's hope and belief that the false affidavit used in the deposition to bolster his own testimony would be the end of the matter, but that was not the case. We know in life that one lie leads to another. And so it is when we attempt to thwart the administration of justice—one obstruction leads to another.

Now we move to another key witness, Betty Currie.

By the time the President concluded his deposition, he knew there were too many details out about his relationship with Ms. Lewinsky. He knew that the only person who would probably be talking was Ms. Lewinsky herself. He knew the cover story that he had carefully created and that was converted into false statements in the affidavit was now in jeopardy and had to be backed at this point by the key witnesses, Monica Lewinsky and Betty Currie. After the deposition, the President needed to do two things: He had to contact Ms. Lewinsky to see if she was still on the team, but he also had to make sure that his secretary, Betty Currie, was lying to protect him. So let's look at how the concern became a frenzied and concerted effort to keep the holes plugged in the dike.

Let's look at exhibits 12 and 13.

What happened on the day the deposition—really the night of the deposition—on January 17. The President finishes testifying in the deposition around 4 p.m. At 5:38 p.m., the President telephones Mr. Jordan at home. And then, at 7:13, the President telephones Ms. Currie at home. At 7:02, the President places a call to Mr. Jordan's office. And then, at 7:13, he gets Ms. Currie at home, finally, and asks her to meet with him on Sunday. It is vitally important that he meet with Ms. Currie at this point because he knows his whole operation is coming unglued.

So the next day, on January 18, which is exhibit 13, there is a whole flurry of activity.

I am not going to go through all of them. You can see the frantic pace at the White House because at 6:11 in the morning, the President had some more bad news. The Drudge Report was released. And that created a greater flurry. Then between 11:49 and 2:55 p.m., two phone calls were made between Mr. Jordan and the President.

Then, at 5 p.m., we see the meetings. That is on the second page. At 5 p.m., Ms. Currie meets with the President. And the President then tells Ms. Currie to find Monica Lewinsky. The telephone calls were generated, and there was no success in that.

Then, that evening the President calls Ms. Currie at home to try once again to see if she had found Monica.

But it was on that day that there was that critical meeting—on that Sunday—in the Oval Office between Betty Currie and the President of the United States.

For that reason, we need next to hear from Betty Currie, the President's personal secretary, as to what occurred during that most unusual meeting on Sunday following the deposition.

Betty Currie testified in the grand jury that the President said that he had just been deposed and that the attorneys had asked several questions about Monica Lewinsky. This is a violation of the judge's gag order. And the President made some comments that were not in line. But he had some choices to make, and he made the wrong choices.

But let's look at exhibit 14, which covers the series of statements made to Ms. Currie. At this point there is the testimony of Betty Currie. She is reciting to the grand jury each of the statements the President made to her after his grand jury testimony.

The first: "I was never really alone with Monica, right?"

Second: "You were always there when Monica was there, right?"

"Monica came on to me, and I never touched her, right?"

I am not going to read each one of those. You can read them. You have heard those as well.

But the President is making those simple declaratory statements to her.

There are three areas that are covered.

First of all, the President makes a case that he was never alone with Monica Lewinsky.

Second, he is making a point to her that "she was the aggressor, not me."

The third point he is making, "I did nothing wrong."

Those are the basic three points of those five statements that the President made to Betty Currie.

During Betty Currie's grand jury testimony she was asked whether she believed that the President wished her to agree to the statements.

Let's look at Betty Currie for a second. She is the classical reluctant witness. Where are her loyalties? How would you examine her testimony? Where is she uncomfortable in her testimony when she is asked the question? How does she shift in the chair? Those are the kind of ways you have to evaluate the truthfulness of the testimony, where their loyalties lie, and their demeanor.

During the questioning she was clearly reluctant.

She was asked a series of questions, and she finally acknowledges that the President was intending for her to agree with the statements that were made. She says, "That is correct." And that is page 74 of Betty Currie's grand jury testimony.

When the President testified in the August 17 grand jury, he was questioned about his intentions when he made those five statements to Ms. Currie in his office on that Sunday. And the President's explanation is as follows to the grand jury:

The President:

> . . . I thought we were going to be deluged by the press comments. And I was trying to refresh my memory about what the facts were.

Then he goes on to testify:

So, I was not trying to get Betty Currie to say something that was untruthful. I was trying to get as much information as quickly as I could.

Ladies and gentlemen of the Senate, you have to determine what the purpose of those five statements to Betty Currie were. Were they to get information or were they to get her to falsely testify when she was called as a witness? Logic tells us that the President's argument is that he was just trying to refresh his memory. Well, so much of a novel legal defense argument.

First, consider the President's options after he left the deposition.

He could have abided by the judge's gag order and not said anything.

Second, he could have called Betty Currie in and asked her an open-ended question: Ms. Currie, or Betty, what do you remember happened?

The third option was to call her in and to make these declaratory statements, violate the judge's order, and tamper with the anticipated testimony of Betty Currie.

That is the course that the President chose. He made sure it was a face-to-face meeting, not a telephone call. He made sure that no one else was present. He made sure that the meeting was on his territory and in his office where he could feel comfortable and he could utilize the power and prestige of his office to have the greatest influence on her future testimony.

After Ms. Currie was in the President's office, he made short, clear, understandable, declarative statements telling Ms. Currie what the story was. He was not interested in what she knew. Why? Because he knew the truth, but he did not want Ms. Currie to tell the truth. The only way to ensure that was by telling her what to say, not asking her what she remembered. You do not refresh someone's memory by telling that person what he or she remembers, and you certainly do not make the declarative statements to someone regarding factual scenarios of which the listener was unaware.

From the statements that were made to her, Betty Currie could not have had any possible knowledge about whether they were ever alone, as to whether she came on to him. No. This was not any attempt for the President to refresh his recollection. It was witness tampering, pure and simple.

Understanding the seriousness of the President's attempting to influence the testimony of Ms. Currie, his attorneys have tried to argue that those statements could not constitute obstruction of justice because she had not been subpoenaed and the President did not know that she was a potential witness at this time. Well, the argument is refuted by both the law and the facts.

The law is clear that a person may be convicted of obstructing justice if he corruptly influenced the testimony of a prospective witness. The witness does not actually have to give testimony. The witness does not have to be under any subpoena. The witness does not have to be on any witness list. And so the law is clear.

Secondly, let's examine the defense in light of the facts. The President himself brought Ms. Currie into the civil rights case as a corroborating witness when he repeatedly used her name in the deposition, and just as significantly the President had to be concerned about a looming perjury charge against him in light of his

false testimony in the deposition. At least six times in that deposition the President challenged the plaintiff's attorneys to question Ms. Currie about the particular issue.

You don't have it in front of you, but you will see it when we distribute the copies of my remarks. I will go through those six times.

At page 58 of the deposition, the President, when asked whether he was alone with Ms. Lewinsky, said that he was not alone with her or that Betty Currie was there with Monica.

At page 70, when asked about the last time the President saw Ms. Lewinsky, he falsely testified he only recalled that she was there to see Betty.

At page 64, he told the Jones lawyers to "ask Betty" whether Lewinsky was alone with him in the White House or not or with Betty in the White House between the late hours.

At page 65 of the deposition, the President was asked whether Ms. Lewinsky sent packages to him, and he stated that Betty handled the packages.

At page 72, the President was asked whether he may have assisted in any way with a job search. He said he thought Betty suggested Vernon Jordan talk to her.

At page 74, he said Monica asked Betty to ask someone to talk to Ambassador Richardson. He asserted Betty as a corroborating witness at least six times in the deposition.

There is no question that Ms. Currie was a prospective witness, and the President clearly wanted her to be deposed as a witness as his "ask Betty" testimony demonstrates.

But there is another fact that, thus far, has been overlooked, and let me draw your attention to this.

Two days before the President's deposition, Betty Currie receives a call from Michael Isikoff, a reporter with Newsweek magazine, inquiring about the records, the courier records of gifts going from Ms. Lewinsky to the President.

You've got a news reporter for a national publication two days before the President's deposition talking to the President's secretary, saying, "I need to see the courier records at the White House." What does Betty Currie do? She testified that she probably told the President this. Then she tells Bruce Lindsey, but she also goes to see Vernon Jordan. Why? Why would the secretary go see Vernon Jordan because she had a press inquiry? The reason is, as we see later on, remember, this is January 15. What happened on December 28 that we will get to a little bit later? On December 28 Betty Currie went and put those gifts under her bed. Why is she nervous? Because Mike Isikoff is calling about the gifts that are presently under her bed, and she is nervous. I would be nervous. And so she goes to see Bruce Lindsey. She goes to see Vernon Jordan: I need help. What do I do? And she probably told the President.

It is all breaking loose, the house of cards is falling down, and she is either going to report to Mr. Jordan or to seek advice from him. Either way, she knows it is serious; it all has legal consequences. And she is a witness to it all.

Not only does Betty Currie's testimony talk about this call from Michael Isikoff and going to see Vernon Jordan, but Vernon Jordan's testimony confirms the visit as well.

The President claims he called Ms. Currie in to work on that Sunday night only to find out what she knew, but the President knew the truth about the relationship, and if he told the truth in deposition the day before, he would have had no reason to be refreshed by Betty Currie.

More importantly, the President's demeanor, Ms. Currie's reaction, and the suggested lies clearly prove that the President was not merely interviewing Ms. Currie. Rather, he was looking for corroboration for his false coverup, and that is why he coached her. He needed a witness for him, not against him.

Now, let's go to exhibit 5, Betty Currie's testimony—excuse me, exhibit 15.

This is Betty Currie's testimony before the grand jury on January 27, 1998. And Betty Currie is asked about this. Now, remember, it was on a Sunday that Betty Currie was first called into the White House to go through these five statements, this coaching by the President. And then she testified to the grand jury:

Question: Did there come a time after that that you had another conversation with the President about some other news about what was going on? That would have been Tuesday or Wednesday—when he called you into the Oval Office?

Betty Currie's answer:

It was Tuesday or Wednesday. I don't remember which one this was, either. But the best I remember, when he called me in the Oval Office, it was sort of a recapitulation of what we had talked about on Sunday—you know, "I was never alone with her"—that sort of thing.

Question: Did he pretty much list the same——

Answer: To my recollection, sir, yes.

Question: And did he say it in sort of the same tone and demeanor that he used the first time he told you on Sunday?

Answer: The best I remember, yes, sir.

And this needs to be emphasized. Not only was that witness coaching taking place on Sunday but it took place a couple days later. It was twice repeated by the President to Betty Currie. He needed to have her good and in line.

This is more than witness tampering. It is witness compulsion of false testimony by an employer to a subordinate employee. This has nothing to do with facts, nothing to do with media inquiries. It has to do with keeping his team on board, keeping the ship from sinking, and hiding the facts that are important. At this point we are not talking about hiding personal facts from inquiring minds but an effort to impede the legitimate and necessary functioning of our court system.

And now let's go to the Martin Luther King holiday, almost exactly a year ago, Monday, January 19. Again, you will see the example of the frantic search for Monica Lewinsky did continue.

Exhibit 16. I am not going to go through all of this, but I just want to briefly show the frantic activity on this particular day.

First of all, you will see Betty Currie is trying to fulfill her responsibility to get ahold of Ms. Lewinsky. She uses the pager system, and she says, "Please call Kay at home." Now "Kay" is the code name that is used for Betty Currie. That is the agreed upon signal. And she uses three messages: "Please call Kay. Please call Kay. Please call Kay."

Then she starts using different techniques to get her attention. "It's a social call." And then she later uses it's a "family emer-

gency." Then she later uses it's "good news." She is using every means possible to get the attention of Monica Lewinsky. And then at 8:50 a.m. the President telephones Currie at home. At 8:56 a.m. the President telephones Jordan at home.

Go on down to 10:56 a.m. "The President telephones Jordan at his office." And so what is going on here? They are nervous; they are afraid; it is all breaking loose. They are trying to get ahold of Monica Lewinsky to find out what is going on, who she is talking to.

Later that day things continued to destabilize for the President. At 4:54 p.m. Mr. Jordan learned from the attorney, Frank Carter, that he no longer represented Ms. Lewinsky, and so Mr. Jordan's link had been cut off. Mr. Jordan continued to attempt to reach the President or someone at the White House. Between 4:58 and 5:22 p.m., he made six calls trying to get ahold of someone at the White House, the President.

When Mr. Jordan was asked about why he was urgently trying to get ahold of the White House, he responded, "Because the President asked me to get Monica Lewinsky a job" and he thought it was "information they ought to have." Jordan finally reaches the President about 6 p.m. and tells him that Carter had been fired.

Why this flurry of activity? It shows how important it was for the President of the United States to find Ms. Lewinsky. Betty Currie was in charge of contacting Monica, and it could not happen, it did not happen. Ms. Lewinsky was a co-conspirator in hiding this relationship from the Federal court and he was losing control over her. In fact, she ultimately agreed to testify truthfully, under penalty of perjury, in this matter. This was trouble for the President.

Let's continue exploring the web of obstruction. But to do this we have to backtrack to what I have already referred to, and that was the incident on December 28, the episode with the gifts.

On December 28, another brick in the wall of obstruction was laid. It was the concealment of evidence. Ms. Lewinsky testified that she discussed with the President the fact that she had been subpoenaed and that the subpoena called for her to produce gifts. And this is what Ms. Lewinsky was telling the President at the meeting with him on December 28. She testified before the grand jury that she recalled telling the President that the subpoena in question had requested a hatpin and other items, and this concerned her—the specificity of it. And the President responded it "bothered" him, too.

Well, let's look at the testimony of Ms. Lewinsky, which is exhibit 17. This is Lewinsky testifying about the meeting.

> And then at some point I said to him [the President], "Well, you know, should I—maybe I should put the gifts away outside my house somewhere or give them to someone, maybe Betty." And he sort of said—I think he responded, "I don't know," or, "Let me think about that," and left that topic.

Not exactly the response you would hope for or expect from the President. But the answer led to action. Later that day Ms. Lewinsky got a call from Ms. Currie, who said, "I understand you have something to give to me," or, according to Ms. Lewinsky, "The President said you have something to give me." She wasn't exactly sure of the phrase but it was either, "I understand you have some-

thing to give me," what Betty Currie said, or Betty Currie said, "The President said you have something to give to me."

And so, ladies and gentlemen, if you accept the testimony of Monica Lewinsky on that point, you must conclude that the directive to retrieve the gifts came from the President. I will concede that there is a conflict in the testimony on this point with the testimony of Betty Currie. Ms. Currie, in her grand jury testimony, had a fuzzy memory, a little different recollection. She testified that "the best she can remember" Ms. Lewinsky called her. But whenever she was asked further, she said that maybe Ms. Lewinsky's memory is better than hers on that issue. But there is helpful evidence to clear up this discrepancy, or this inconsistency. Monica, you will recall, in her deposition said she thought that Betty had called her and she thought that the call came from her cell phone number.

Well, it was not known at the time of the questioning of Monica Lewinsky, but since then the cell phone record was retrieved. And you don't have it in front of you, but it will be available. The cell phone record was retrieved that showed, on Betty Currie's cell phone calls, a call was made at 3:32 from Betty Currie to Monica Lewinsky. And this confirms the testimony of Monica Lewinsky that the followup to get the gifts came from Betty Currie. The only way she would know about it is if the President directed her to go retrieve the gifts, as was discussed with Monica earlier.

Now, the President will argue that Monica's timeline does not fit with the time of the cell phone call. But remember, the cell phone record was retrieved subsequent to both the testimony of Monica Lewinsky and Betty Currie before the grand jury, and therefore the record was not available to refresh the recollection or to make inquiry with him about that. Monica Lewinsky's time estimates as to when Betty Currie arrived to pick up the gifts was based upon her memory without the benefit of records.

The questions raised by the President on this issue are legitimate and demonstrate the need to call the key witnesses to a trial of this case and to assess which version of the events is believable and substantiated by the corroborating evidence. This is certainly an area of testimony where the juror needs to hear from Betty Currie and Monica Lewinsky and to examine all of the circumstantial evidence and documentary evidence to determine the truth. It is my belief, based upon common sense and based upon the documentary evidence, that the testimony of Monica Lewinsky is supported in the record and it leads to the conclusion that it was the President who initiated this retrieval of the gifts and the concealment of the evidence.

There are many lawyers in this room, and you know that in Federal cases all across this country judges instruct juries on circumstantial evidence. We have presented to you a great amount of direct evidence, grand jury testimony, eyewitness testimony, documentary evidence. But juries can use circumstantial evidence as well. There is a typical line from the instruction that is given in Federal courts to Federal juries all across the land:

> The law makes absolutely no distinction between the weight or value to be given either to direct or circumstantial evidence. Nor is a greater degree of certainty required of circumstantial evidence than of direct evidence.

So I think it is incumbent upon you to evaluate the circumstances very carefully in addition to the testimony.

Now, let's examine the key question for a moment. Why did Betty Currie pick up the gifts from Monica Lewinsky? Monica Lewinsky states that she did not request this and the retrieval was initiated by the call from Betty Currie. This was after the meeting with the President. Monica Lewinsky's version is corroborated by the cell phone record and the pattern of conduct on the part of Betty Currie. What do I mean by that? As a loyal secretary to the President, it is inconceivable that she would go to retrieve gifts that she knows the President is very concerned about and could bring down the whole house. Betty Currie, a subordinate employee, would not engage in such activity on such a sensitive matter without the approval and direction of the President himself.

In addition, let's look further to the actions of Betty Currie. It becomes clear that she understands the significance of these gifts, their evidentiary value in a civil rights case, and the fact that they are under subpoena. She retrieves these items, and where does she place them? She hides them under her bed—significantly, a place of concealment.

Now, let's look at the President's defense. The President stated in his response to questions 24 and 25, which were submitted from the House to the President, he was not concerned about the gifts. In fact, he recalled telling Monica that if the Jones lawyers request the gifts, she should just turn them over to them. The President testified he was "not sure" if he knew the subpoena asked for gifts.

Now, why in the world would Monica and the President discuss turning over gifts to the Jones lawyer if Ms. Lewinsky had not told him that the subpoena asked for gifts? On the other hand, if he knew the subpoena requested gifts, why would he give Monica more gifts on December 28? This seems odd. But Ms. Lewinsky's testimony reveals the answer. She said that she never questioned "that we were ever going to do anything but keep this private," and that means to take "whatever appropriate steps need to be taken." That is from Monica's grand jury testimony of August 6.

Why would the President even meet with Monica Lewinsky on December 28 when their relationship was in question and he had a deposition coming up? Certainly he knew he would be questioned about it. Certainly if Monica became a witness she would be questioned about the relationship, that she would be asked when was the last time you met with the President, and now they have to say December 28, if they were going to tell the truth.

The answer is, the President knew that he had to keep Monica Lewinsky on the team and he was willing to take more risks so that she would continue to be a part of the conspiracy to obstruct the legitimate functions of the Federal court in a civil rights case.

It should be remembered that the President has denied each and every allegation of the two articles of impeachment; he has denied each element of the obstruction of justice charges, including this allegation that he encouraged a scheme to conceal evidence in a civil rights case. This straightforward denial illustrates the dispute in the evidence and testimony. It sets the credibility of Monica Lewinsky, the credibility of Betty Currie, the credibility of Vernon

Jordan, and others against the credibility of the President of the United States.

How can you, as jurors, determine who is telling the truth? I have pointed to the corroborating evidence, the circumstantial evidence, as well as common sense supporting the testimony of Monica Lewinsky. But let me ask you two questions: Can you convict the President of the United States without hearing personally the testimony of one of the key witnesses? The second question is: Can you dismiss the charges under this strong set of facts and circumstances without hearing and evaluating the credibility of key witnesses?

Let me take this a step further and evaluate the credibility of the President. Let's first look back at his testimony on the December 28 meeting that he gave in his deposition. In that case, he seriously misrepresented the nature of his meeting with Ms. Lewinsky, and that was the gift exchange. First he was asked: "Did she tell you that she had been served with a subpoena in this case?" The President answered flatly: "No. I don't know if she had been."

Again, this is his testimony in the deposition. He was also asked in the deposition if he "ever talked to Monica Lewinsky about the possibility of her testifying." His answer: "I'm not sure," he said. He then added that he may have joked that the Jones lawyers might subpoena every woman he has ever spoken to, and that "I don't think we ever had more of a conversation than that about it. . ."

Not only does Monica Lewinsky directly contradict his testimony but the President later had to answer questions in the grand jury about this same set of circumstances and the President directly contradicted himself. Speaking of this December 28 meeting, he said that he "knew by then, of course, that she had gotten a subpoena" and they had a "conversation about the possibility of her testifying."

I submit to this body that the inconsistencies of the President's own testimony, as well as common sense, seriously diminish his credibility on this issue.

Now let's go forward, once again, to the time period in which the President gave his deposition in the Paula Jones case. The President testified under oath on January 17, and immediately thereafter, remember, he brought Betty Currie in to present a set of false facts to her, seeking her agreement and coaching her.

But the President is fully convinced that he can get by with his false denials because no one will be able to prove what did or did not happen in the Oval Office. There were no witnesses, and it boils down to a "he said, she said" scenario, and as long as that is the case, he believes he can win. If the President can simply destroy Monica Lewinsky's credibility in public and before the grand jury, then he will escape the consequences for his false statements under oath and obstruction in the civil rights case. Now, remember, this viewpoint, though, is all before the DNA tests were performed on the blue dress, forcing the President to acknowledge certain items.

In order to carry out this coverup and obstruction, the President needed to go further. He needed not only Betty Currie to repeat his false statements but also other witnesses who would assuredly be

called before the Federal grand jury and who would be questioned by the news media in public forums. And this brings us to the false statements that the President made to his White House staff and Presidential aides.

Let's call Sydney Blumenthal and John Podesta to the witness stand. I concede they would be adverse witnesses. This is referred to in exhibit 18 that you have in front of you.

First, the testimony of Sydney Blumenthal. Mr. Blumenthal, to put this in perspective, is testifying about his conversations when the President called him in to go through these facts of what happened. So Mr. Blumenthal testified that "it was at that point that he"—referring to the President—"gave his account as to what happened to me and he said that Monica—and it came very fast. He said, 'Monica Lewinsky came at me and made a sexual demand on me.' He rebuffed her. He said, 'I've gone down that road before, I've caused pain for a lot of people and I'm not going to do that again.'"

Look at this next line. "She threatened him. She said that she would tell people they'd had an affair, that she was known as the stalker among her peers, and that she hated it and if she had an affair or said she had an affair then she wouldn't be the stalker any more."

He talks about this character in a novel, and I haven't read that book. But the last line: "And I said to him, I said, "When this happened with Monica Lewinsky, were you alone?' He said, 'Well, I was within eyesight or earshot of someone.'"

Let's go to John Podesta's testimony where he was called in the same fashion. The President talked to him about what is happening:

Question: Okay. Share that with us.

Answer: Well, I think he said—he said that—there was some spate of, you know, what sex acts were counted, and he said that he had never had sex with her in any way whatsoever.

Question: Okay.

Answer: —that they had not had oral sex.

Very briefly, Dick Morris. You have heard this. I will refer to the last line: "'They're just not ready for it,' meaning the voters. And he—the President—said, 'Well, we just have to win, then.'"

As the President testified before the grand jury, he knew these witnesses would be called before the grand jury. At page 106 of the President's testimony before the grand jury—I just want to confirm this point because it is important—he testified—the question was: "You know that they"—and this is referring to John Podesta, Sydney Blumenthal and his aides—"might be witnesses, you knew they might be called into the grand jury, didn't you?"

His answer: "That's right."

So there is no question these were witnesses going to testify before the grand jury. He was giving them false information, and he did not limit it to that. The false statements to them constitute witness tampering and obstruction of justice.

I think there are two significant points in the statements the President made to his aides.

First of all, the President, who wants to do away with the politics of personal destruction, indicates a willingness to destroy the credibility and reputation of a young person who worked in his office for

what reason? In order to preserve not only his Presidency but, more significantly, to defeat the civil rights case against him. It is not a matter of saying he didn't do it because he could have simply uttered a denial, but he engaged in character assassination that he knew would be repeated to the Federal grand jury and throughout the public—she was a stalker, she threatened me, she came on to me—and it was repeated.

Secondly, he makes it clear in his statements to John Podesta that he denies any sexual relations with Monica Lewinsky, including oral sex. There is no quibbling about definitions in this statement. It clearly reflects an attempt to deceive, lie, and obstruct our system of justice.

In this case, at every turn, he used whatever means available to evade the truth, destroy evidence, tamper with witnesses, and took any other action required to prevent evidence from coming forward in a civil rights case that would prove a truth contrary to the President's interest. He had obstructed the administration of justice before the U.S. district court in a civil rights case and before the Federal grand jury. But as we move toward a conclusion, let's not focus just on the supporting cast we talked about, but we need to look at the direct and personal actions of the President.

I want to look at exhibit 20. This just summarizes the seven pillars of obstruction. What did the President do that constitutes evidence of obstruction?

No. 1, he personally encouraged a witness, Monica Lewinsky, to provide false testimony.

No. 2, the President had direct involvement in assuring a job for a witness—underlining "direct involvement." He made the calls, Vernon Jordan did, and it is connected with the filing of the false affidavit by that witness.

No. 3, the President personally, with corrupt intentions, tampered with the testimony of a prospective witness, Betty Currie.

No. 4, the President personally provided false statements under oath before a Federal grand jury.

No. 5, by direct and circumstantial evidence the President personally directed the concealment of evidence under subpoena in a judicial proceeding.

No. 6, the President personally allowed false representations to be made by his attorney, Robert Bennett, to a Federal district judge on January 17.

No. 7, the President intentionally provided false information to witnesses before a Federal grand jury knowing that those statements would be repeated with the intent to obstruct the proceedings before that grand jury and that is the statements that he made to the aides.

The seven pillars of this obstruction case were personally constructed by the President of the United States. It was done with the intent that the truth and evidence would be suppressed in a civil rights case pending against him. The goal was to win, and he was not going to let the judicial system stand in his way.

At the beginning of my presentation, I tried to put this case into perspective for myself by saying that this proceeding is the same as to what takes place in every courtroom in America—the pursuit of truth, seeking equal justice, and upholding the law. All of that

is true. But we know there is even more at stake in this trial. What happens here affects the workings of our Constitution, it will affect the Presidency in future decades, and it will have an impact on a whole generation of Americans. What is at stake is our Constitution and the principle of equal justice for all.

I have faith in the Constitution of the United States, but the checks and balances of the Constitution are carried out by individuals—individuals who are entrusted under oath with upholding the trust given to us by the people of this great land. If I believe in the Constitution, that it will work, then I must believe in you.

Ladies and gentlemen of the Senate, I trust the Constitution of the United States. But today it is most important that I believe in you. I have faith in the U.S. Senate. You have earned the trust of the American people, and I trust each of you to make the right decision for our country.

Thank you, Mr. Chief Justice.

The CHIEF JUSTICE. The Chair recognizes the majority leader.

RECESS

Mr. LOTT. Mr. Chief Justice, I ask unanimous consent that we take another 15-minute break in the proceedings. And I urge the Senators to return promptly to the Chamber so we can begin after the 15-minute break.

There being no objection, at 4:51 p.m., the Senate recessed until 5:10 p.m.; whereupon, the Senate reassembled when called to order by the Chief Justice.

The CHIEF JUSTICE. The Chair recognizes the majority leader.

Mr. LOTT. Mr. Chief Justice, I believe we are ready to resume final presentation of the afternoon. Several Senators have inquired what will happen the balance of the day. I believe the presentation by Congressman ROGAN will be the last of the day. It is anticipated we will complete today's presentation around 6:30 or 6:45.

I yield the floor.

The CHIEF JUSTICE. The Chair recognizes Mr. Manager ROGAN.

Mr. Manager ROGAN. Mr. Chief Justice, counsel for the President, Members of the United States Senate, my name is Congressman JAMES E. ROGAN. I represent the 27th District of California.

May I say at the outset that some of the facts and evidence you will hear in my presentation may sound familiar in light of the last presentation. Although at times the facts may appear to be a crossover, the relevance will be presented in a different light.

Mr. Manager HUTCHINSON's presentation offered the evidence as it relates to the obstruction of justice charge against the President in article II. I will be inviting this body to view the evidence within the framework of article I, perjury before the grand jury.

On behalf of the House of Representatives and in the name of the people of the United States, I will be presenting to the Senate evidence against the President to demonstrate he committed perjury before a Federal grand jury as set forth in article I of the articles of impeachment.

Article I of the impeachment resolution against President Clinton alleges that he committed perjury before the grand jury.

On August 17, 1998, President Clinton swore to tell the truth, the whole truth, and nothing but the truth. The evidence shows that contrary to that oath, the President willfully provided perjurious, false, and misleading statements to the grand jury in four general areas:

First, he perjured himself when he gave a false accounting to the grand jury about the nature and details of his relationship with a 21-year-old intern, Ms. Monica Lewinsky, who was a subordinate Federal Government employee.

Second, he perjured himself before the grand jury when he repeated previous perjured answers he gave under oath in a sexual harassment suit, which was a Federal civil rights action brought against him by Paula Jones.

Third, he perjured himself before the grand jury when he repeated previous perjured answers to justify his attorney's false representations to a Federal judge in the Paula Jones sexual harassment lawsuit against him.

Finally, he perjured himself before the grand jury when he testified falsely about his attempts to get other potential grand jury witnesses to tell false stories to the grand jury, and to prevent the discovery of evidence in Paula Jones' sexual harassment lawsuit against him.

In a judicial proceeding, a witness has a very solemn obligation to tell the truth, the whole truth, and nothing but the truth. Perjury is a serious crime because our judicial system can only succeed if citizens are required to tell the truth in court proceedings. If witnesses may lie with impunity for personal or political reasons, "justice" is no longer the product of the court system and we descend into chaos. That is why the U.S. Supreme Court has placed a premium on truthful testimony and shows no tolerance for perjury.

More than 20 years ago, the Supreme Court addressed this very concept of perjury and its dangerous effect on our system of law. Listen to the words of the U.S. Supreme Court:

> In this constitutional process of securing a witness' testimony, perjury simply has no place whatever. Perjured testimony is an obvious and flagrant affront to the basic concepts of judicial proceedings. . . . Congress has made the giving of false answers a criminal act punishable by severe penalties; in no other way can criminal conduct be flushed into the open where the law can deal with it.

That is the framework under which the House of Representatives acted in impeaching the President of the United States and now respectfully urges this body to call the President to constitutional accountability.

The key to understanding the facts of this case is to understand why the President was asked, under oath, questions about his private life in the first place.

Despite the popular spin, it wasn't because Members of Congress, or lawyers from the Office of the Independent Counsel, or a gaggle of reporters suddenly decided to invade the President's privacy. No. This all came about because of a claim against the President from when he was the Governor of Arkansas.

During the discovery phase of the Paula Jones sexual harassment case against the President, Federal Judge Susan Webber Wright ordered him to answer questions under oath relating to any sexual relationship he may have had while Governor and President

with subordinate female Government employees. These orders are common in similar cases, and the questions posed to President Clinton are questions routinely posed to defendants in civil rights sexual harassment cases every single day in courthouses throughout the land.

During the President's deposition in the Paula Jones case, he was asked questions about his relationship with Monica Lewinsky. The judge allowed these questions because they possibly could lead Ms. Jones to discover if there was any pattern of conduct to help prove her case. The President repeatedly denied that he had a sexual relationship with Monica Lewinsky.

A few days later, the story about his relationship with Ms. Lewinsky broke in the press. A criminal investigation began to determine whether the President perjured himself in the Paula Jones sexual harassment case and obstructed justice by trying to defeat her claim against him by corrupt means.

On the afternoon of August 17, 1998, President Clinton raised his right hand and took an oath before the grand jury in their criminal investigation.

[Text of videotape presentation:]

> William Jefferson Clinton, Do you solemnly swear that the testimony you are about to give in this matter will be the truth, the whole truth, and nothing but the truth, so help you God?

Note the incredibly solemn obligation of the oath the President took:

> Do you solemnly swear that the testimony you are about to give in this matter will be the truth, the whole truth, and nothing but the truth?

When the President made that solemn pledge, he was not obliging himself to tell the grand jury the partial truth; he was not obliging himself to tell the "I didn't want to be particularly helpful" truth; he was not obliging himself to tell the "this is embarrassing so I think I'll fudge on it a little bit" truth. He was required to tell the truth, the whole truth, and nothing but the truth, and he made that pledge in the name of God.

The attorneys for the Office of the Independent Counsel showed great deference to the President when they questioned him that day. The President's attorneys were allowed to be there with him during the entire proceeding so that he could confer with them at his leisure if he was unsure of how to respond to a question. As a matter of fact, the attorney who questioned the President encouraged him to confer with his lawyers if there arose in the President's mind any reason to hesitate before answering a question.

The following exchange occurred at the beginning of the President's testimony. The President was told:

> Normally, grand jury witnesses, while not allowed to have attorneys in the grand jury room with them, can stop and consult with their attorneys. Under our arrangement today, your attorneys are here and present for consultation and you can break to consult them as necessary. . . . Do you understand that, sir?

The President responded: "I do understand that."

As a practical matter, the President had three options as he appeared before the grand jury to testify.

First, the President could tell the truth about his true relationship with Ms. Lewinsky.

However, the evidence will clearly show that the President rejected the option of telling the truth.

Second, the President knew he could invoke his fifth amendment privilege against self-incrimination.

The independent counsel's attorney explicitly reminded the President about his right to refuse to answer any question that might tend to incriminate him.

The President was asked:

> You have a privilege against self-incrimination. If a truthful answer to any question would tend to incriminate you, you can invoke the privilege and that invocation will not be used against you. Do you understand that?

The President's response was: "I do."

The President knew he had the right to refuse to answer any incriminating questions and that no legal harm would have come to him for doing so.

But he rejected this option, just as he rejected the option of telling the truth, the whole truth, and nothing but the truth.

Instead, he selected a third path.

He continued to lie about corrupt efforts to destroy Paula Jones' civil rights lawsuit against him.

If a trial is permitted before this body where live witnesses can be called and where their credibility can be scrutinized, the evidence will show this distinguished body that the course the President charted was a course of perjury.

Despite the President's unique level of judicial sophistication and expertise, the attorneys at the grand jury were careful to make sure the President understood his responsibilities to tell the truth, the whole truth, and nothing but the truth.

They did this at the outset of his testimony, before any questions were asked that might tempt the President to lie under oath.

And they specifically warned him that if he were to lie or intentionally mislead the grand jury, he could face perjury and obstruction of justice charges, both of which are felonies under Federal law.

This exchange occurred before the President's testimony:

> Q: Mr. President, you understand that your testimony here today is under oath?
> A: I do.
> Q: And you understand that because you have sworn to tell the truth, the whole truth, and nothing but the truth, that if you were to lie or intentionally mislead the grand jury, you could be prosecuted for perjury and/or obstruction of justice?
> A: I believe that's correct.
> Q: Is there anything that . . . I've stated to you regarding your rights and responsibilities that you would like me to clarify or that you don't understand?
> A: No, sir.

Despite this ominous warning, the prosecutors continued emphasizing the need for the President to resist lying to the grand jury.

Still intent on making sure the President understood his obligations, the attorneys further advised him:

> Q: Mr. President, I would like to read for you a portion of Federal Rule of Evidence 603, which discusses the important function the oath has in our judicial system.
> It says that the purpose of the oath is . . . calculated to awaken the witness' conscience and impress the witness' mind with the duty to tell the truth.
> Could you please tell the grand jury what that oath means to you for today's testimony?

A: I have sworn an oath to tell the grand jury the truth, and that's what I intend to do.

When the President said in that very last answer I just read that he swore an oath to tell the grand jury "the truth," the prosecutor immediately followed up with this question. Here is what he was told.

Question to the President:

Q: You understand that [the oath] requires you to give the whole truth, that is, a complete answer to each question, sir?
A: I will answer each question as accurately and fully as I can.

One would think these repetitive explanations would be enough to warn even the most legally unsophisticated witness about the need to treat a grand jury criminal investigation seriously, and the need to tell the whole truth at any cost.

No reasonable person could believe at this point that the President did not understand his obligations.

Yet, just to be sure, the attorneys again impressed on the President his solemn duty to tell the truth:

Question to the President:

Q: Now, you took the same oath to tell the truth, the whole truth, and nothing but the truth on January 17th, 1998, in a deposition in the Paula Jones litigation; is that correct, sir?
A: I did take an oath then.
Q: Did the oath you took on that occasion mean the same to you then as it does today?
A: I believed then that I had to answer the questions truthfully. That is correct.
. . .
Q: And it meant the same to you then as it does today?
A: Well, no one read me a definition then and we didn't go through this exercise then.
I swore an oath to tell the truth, and I believed I was bound to be truthful and I tried to be.

Having just received his "refresher course" on either "taking the fifth" and remaining silent, *or* telling the whole truth and nothing but the truth, the President acknowledged he was required to tell the truth when he gave answers to questions 8 months earlier in the Paula Jones sexual harassment civil rights lawsuit.

Question to the President:

Q: At the Paula Jones deposition, you were represented by Mr. Robert Bennett, your counsel, is that correct?
A: That is correct.
Q: He was authorized by you to be your representative there, your attorney, is that correct?
A: That is correct.
Q: Your counsel, Mr. Bennett, indicated . . . and I'm quoting, "The President intends to give full and complete answers as Ms. Jones *is entitled* to have."
My question to you is, do you agree with your counsel that a plaintiff in a sexual harassment case is, to use his words, *entitled* to have the truth?
A: I believe that I was bound to give truthful answers, yes, sir.
Q: But the question is, sir, do you agree with your counsel that a plaintiff in a sexual harassment case is entitled to have the truth?
A. I believe when a witness is under oath in a civil case, or otherwise under oath, the witness should do everything possible to answer the questions truthfully.

Thus, the groundwork was laid for the President to testify under oath.

He knew how the rules worked respecting testimony before the grand jury.

If a question was vague or ambiguous, the President could ask for a clarification.

If he was unsure *how* to answer, or indeed *whether* to answer a question, he could stop the questioning, take a break, and consult privately with his attorneys who were present with him.

If giving an answer would tend to incriminate him, he could refuse to answer the question by claiming his fifth amendment rights.

But if, after all of this, he decided to give an answer, the answer he gave was *required* to be the truth, the whole truth, and nothing but the truth. And it was no different than the obligation when he testified in the Paula Jones deposition—the same oath, the same obligation.

Let's look at how the President chose to meet his obligation.

As noted in my opening remarks, the President's grand jury perjury is the basis for article I of the impeachment resolution. The evidence shows, and live witnesses clearly will demonstrate, that the President repeatedly committed perjury before the grand jury when he testified as a defendant in a sexual harassment civil rights lawsuit against him.

He intentionally failed in his lawful obligation to tell the truth in four general areas. First, the President committed perjury before the grand jury when he testified about the nature of his relationship with Monica Lewinsky, a 21-year-old White House intern who, by definition, was a subordinate Government employee.

On December 5, 1995, Monica Lewinsky's name appeared on the Paula Jones witness list. Later, the President was ordered by Federal Judge Susan Webber Wright to answer questions about Monica Lewinsky because the President was a defendant in a sexual harassment case.

At his deposition in the Paula Jones case, the President was shown a definition approved by Judge Wright of what constitutes sexual relations. I am going to read the definition that was presented to the President.

And let me say at the outset that I am going to slightly sanitize it. You have in your materials, Members of this body, a copy of the actual definition that was given to you, so you will be able to understand precisely what was put before the President.

Definition of sexual relations:

> For the purposes of this deposition, a person engages in sexual relations when the person knowingly engages in or causes contact with the [certain enumerated body parts] of any person with an intent to arouse or gratify the sexual desire of any person.

Members of the Senate, just for clarification, I did not feel the need to actually relate to this body what those enumerated body parts are.

After reviewing the deposition, the President then denied that he ever had a sexual relationship with Monica Lewinsky. As we have already seen, from the day in January when the President testified in the Jones deposition until the day he appeared in August for his grand jury testimony, he vehemently denied ever having a sexual relationship with Monica Lewinsky.

Listen to the President addressing the American people on the subject of his credibility. The date is January 26, 1998, 5 days after the Lewinsky story broke in the press.

[Text of videotape presentation:]

"But I want to say one thing to the American people. I want you to listen to me. I'm going to say this again.

"I did not have sexual relations with that woman—Miss Lewinsky.

"I never told anybody to lie—not a single time. Never. These allegations are false. And I need to go back to work for the American people.

"Thank you."

Beginning in January 1998, the President went on an 8-month campaign, both under oath and in the press, denying any sexual relationship with Monica Lewinsky in any way, shape, or form. But 8 months after his deposition testimony and these passionate denials, the tide had turned against his story. By August, Monica Lewinsky was now cooperating with the office of the independent counsel. If she was telling the truth in her sworn testimony, then the President's January denial in the Paula Jones case would have been a clear case of him committing perjury and obstructing justice.

Why? Because she was describing, in very graphic detail, conduct occurring between her and the President that clearly fit the definition of "sexual relations" as used in the Paula Jones deposition—conduct that he repeatedly denied under oath.

So by the time the President sat down for his grand jury testimony to answer these questions under oath, he had put himself in a huge box. He could not continue the outright lie because Ms. Lewinsky had turned over her blue dress for DNA testing, and at the time of his grand jury testimony he didn't know what the results of that FBI test were. Under such circumstances, continuing the lie was too risky of a strategy even for the most accomplished of gamblers. But if he told the truth, his earlier perjury and obstruction of justice would have ended his Presidency. He was sure he would have been driven from office.

Remember that the President had actually authorized that a poll be taken for him by Dick Morris, and the poll wasn't just taken on whether the American people would forgive him for adultery; the President asked Dick Morris to poll in two other areas. He asked Dick Morris to poll whether the American people would forgive him for perjury and obstruction of justice. When he got the poll results back, he learned that the American people would forgive him for the adultery but they would not forgive him for perjury or for obstruction of justice.

Once he got the bad news from Dick Morris that his political career was over if he perjured himself, he told Dick Morris, "We'll just have to win." So at his grand jury testimony, once the first question was asked about his relationship with Monica Lewinsky, the President produced a prepared statement and read from it. This prepared statement he read to the grand jury on August 17, 1998, was the linchpin in his plan to "win."

[Text of videotape presentation:]

Q. Mr. President, were you physically intimate with Monica Lewinsky?

A. Mr. Bittman, I think maybe I can save you and the grand jurors a lot of time if I read a statement, which I think will make it clear what the nature of my relationship with Ms. Lewinsky was and how it related to the testimony I gave, what

I was trying to do in that testimony. And I think it will perhaps make it possible for you to ask even more relevant questions from your point of view. And, with your permission, I'd like to read that statement.

Q. Absolutely. Please, Mr. President.

A. When I was alone with Ms. Lewinsky on certain occasions in early 1996 and once in early 1997, I engaged in conduct that was wrong. These encounters did not consist of sexual intercourse. They did not constitute sexual relations as I understood that term to be defined at my January 17th, 1998 deposition. But they did involve inappropriate intimate contact.

These inappropriate encounters ended, at my insistence, in early 1997. I also had occasional telephone conversations with Ms. Lewinsky that included inappropriate sexual banter.

I regret that what began as a friendship came to include this conduct. I take full responsibility for my actions. While I will provide the grand jury whatever other information I can, because of privacy considerations affecting my family, myself, and others, and in an effort to preserve the dignity of the office I hold, this is all I will say about the specifics of these particular matters.

I will try to answer to the best of my ability other questions, including questions about my relationship with Ms. Lewinsky, questions about my understanding of the term of sexual relations, as I understood it to be defined at my January 17th, 1998, deposition, and questions concerning alleged subordination of perjury, obstruction of justice and intimidation of witnesses.

That . . . is my statement.

Beyond that statement, the President generally refused to answer specific questions about his relationship with Monica Lewinsky. The President used that prepared statement as a substitute answer for specific questions about his conduct with Ms. Lewinsky 19 separate times during his testimony before the grand jury. The purpose of the prepared statement was to avoid answering the types of specific harassment lawsuit questions for which the U.S. Supreme Court and Judge Susan Webber Wright had earlier cleared the way. The evidence shows the President used this prepared statement in order to justify the perjurious answers he gave at his deposition which were intended to affect the outcome of the Paula Jones case. The fact that this statement was prepared in advance shows his intent to mislead the grand jury in this very area. Ironically, this prepared statement was supposed to inoculate the President from perjury. Instead, it opened him up to 19 more examples of giving perjurious, false, and misleading answers under oath.

For example, in that prepared statement, the President said his sexual contact with Ms. Lewinsky began in 1996, and not in 1995, as Ms. Lewinsky had testified. This was not a mere slip of memory over a meaningless timeframe; there is a discrepancy in the dates for a reason. You see, under the President's version, in 1996 Monica Lewinsky was a paid White House employee. Under the facts as testified to by Ms. Lewinsky, when the relationship really began in 1995, she was not a paid employee at the White House; she was a young, 21-year-old White House intern.

The concept of a President having a sexual relationship in the White House with a young intern less than half his age was a public relations disaster for the President, as everyone vividly remembers. It is clear that the President somehow viewed the concept as less combustible if he could take the "young intern" phrase out of the public lexicon. Yet in his deposition testimony, the President admitted he met her and saw her when she was an intern working in the White House in November 1995, during the Government shutdown. Monica Lewinsky confirmed this. In fact, she testified

that the first time she ever spoke to the President was on November 15, 1995, during the Government shutdown. And she also said that the very first time that she ever spoke to the President was the same day he invited her back to the Oval Office and began a sexual relationship with her.

It is obvious that the reference in the President's prepared statement to the grand jury that this relationship began in 1996 was intentionally false.

The President's statement was intentionally misleading when he described being alone with Ms. Lewinsky only on certain occasions. Actually, they were alone in the White House at least 20 times and had at least 11 sexual encounters at the White House. The President attempted to use language that subtly minimized the number of times they were alone.

The President's statement was intentionally misleading when he described his telephone conversations with Monica Lewinsky as "occasional." In fact, there are at least 55 documented telephone conversations between the President of the United States and the young intern. And without going into further graphic detail, the evidence shows that, at least on 17 of those occasions, those conversations included much more than mere sexual banter, as the President described it.

The most unsettling part of that statement was uttered near the close. Listen to what the President said: "I regret that what began as a friendship came to include this conduct." "Friendship." The very day the President met and spoke with a young White House intern for the first time was the day he invited her back to the Oval Office to perform sex acts on him.

In fact, Monica Lewinsky said that after their sexual relationship was over a month old, she didn't even think the President knew her name. The President's statement about his relationship with Monica Lewinsky beginning as a friendship is a callous and deceptive mischaracterization of how his relationship with this young woman really began.

Thus, the President began his deposition testimony by reading a false and misleading statement to the grand jury. He then used that statement as an excuse not to answer specific questions that were directly relevant to allowing the grand jury to complete its criminal investigation. Had he given specific answers to specific questions about the true nature of his relationship, the grand jury would have been able to learn the whole truth about whether the President perjured himself and obstructed justice in the Paula Jones sexual harassment civil rights lawsuit.

Paula Jones had a legal and constitutional right to learn if the President, while as President or Governor, used his position of power and influence to get sexual favors from subordinate female employees in the workplace or to reward subordinate female employees for granting such favors to him. Instead, the President intentionally provided on 19 separate occasions a misleading statement instead of giving a true characterization of his conduct, as required by his oath.

He had no legal or constitutional right to refuse to answer such questions without claiming a fifth amendment privilege and then allowing Judge Wright to make a determination as to whether the

privilege applied. The President's preliminary statement delivered 19 times was an initial shot across the perjury bow offered by the President throughout his grand jury testimony. It showed a premeditated effort to thwart the grand jury's criminal investigation, to justify his prior wrongdoing, and to deny Paula Jones her constitutional right to bring forward her claim in a court of law.

The President gave further perjurious, false, and misleading testimony regarding the nature and details of his relationship with Monica Lewinsky. One of the ways the President tried to justify his perjurious answers in the Jones deposition about his relationship was to deconstruct the English language. Remember, the President was shown a copy of the definition of "sexual relations" that Judge Wright approved in his January deposition. This definition was directed by Judge Wright to be used as the guide under which the President was to answer questions about his relationship with Monica Lewinsky. After carefully reviewing that definition, the President said under oath that it did not apply to his relationship with her.

It is important to remember that at the time the President testified that he never had sexual relations with Monica Lewinsky, this was not a risky perjury strategy. After all, he had successfully used Vernon Jordan to get Monica Lewinsky a good job in New York, despite her questionable qualifications. She had filed a false affidavit in the Jones case denying a sexual relationship with the President. She and the President had previously agreed to comprehensive cover stories to deny the truth of their relationship if anyone ever confronted them about it. And the bevy of gifts the President had given to Monica were now nestled safely under Betty Currie's bed so that they would never be produced to or discovered by Mrs. Jones' attorneys in compliance with their subpoena to have those gifts produced.

The perjury strategy was a safe bet in January at his deposition, but it soon turned upside down for the President. By the time of his grand jury testimony in August, the President knew things had changed drastically but not in his favor. In light of Ms. Lewinsky's cooperation with the independent counsel, the impending FBI report on the DNA testing on the blue dress, and the President's decision not to confess to his crime, the President needed to come up with some excuse. Here is how the President, at his August grand jury appearance, tried to explain away his January deposition denial of engaging in sexual relations with Monica Lewinsky.

[Text of videotape presentation:]

Q. Did you understand the words in the first portion of the [Jones deposition] exhibit, Mr. President, that is, "For the purposes of this deposition, a person engages in 'sexual relations' when the person knowingly engages in or causes . . ."?

Did you understand, do you understand the words there in that phrase?

A. Yes . . . I can tell you what my understanding of the definition is, if you want . . . My understanding of this definition is it covers contact by the person being deposed with the enumerated areas, if the contact is done with an intent to arouse or gratify. That's my understanding of the definition.

Q. What did you believe the definition to include and exclude? What kinds of activities?

A. I thought the definition included any activity by the person being deposed, where the person was the actor and came into contact with those parts of the bodies with the purpose or intent of gratification, and excluded any other activity. For example, kissing's not covered by that, I don't think.

Q. Did you understand the definition to be limited to sexual activity?

A. Yes, I understood the definition to be limited to physical contact with those areas of the body with the specific intent to arouse or gratify. That's what I understood it to be.

Q. What specific acts did the definition include, as you understood the definition on January 17th, 1998?

A. Any contact with the areas that are mentioned, sir. If you contacted those parts of the body with an intent to arouse or gratify, that is covered.

Q. What did you understand . . .

A. The person being deposed. If the person being deposed contacted those parts of another person's body with an intent to arouse or gratify, that was covered.

If that answer sounds confusing to you, there is a reason for that. It was meant to be.

What the President now was saying to the grand jury is that during their intimate relationship in the Oval Office, Monica Lewinsky had sexual relations with him; he didn't have sexual relations with her.

Consider that for a minute.

The President is asking everyone to believe that between the years 1995 and 1997, while Monica Lewinsky was engaged in a pattern of explicit availability for him as she described in her testimony, the President carefully avoided having any intimate contact with her as described in Judge Wright's very detailed definition.

According to the President, since he never intimately touched her as described in the definition—she only touched him—then he was under no obligation to answer questions in the harassment suit about Monica Lewinsky as Federal Judge Susan Webber Wright ordered him to do under oath.

Not only does the President's claim strain all boundaries of common sense; it is directly in conflict with Monica Lewinsky's detailed and corroborated accounts of their relationship.

As if this ridiculous expansion of Judge Wright's definition of what constituted sexual relations wasn't enough, the President then decided to take his interpretation of the judge's definition one step further. He added a new element as to why he claimed the definition didn't apply to him.

When asked again, at his grand jury testimony, what he thought the definition of sexual relations meant, here is the new twist that the President came up with.

[Text of videotape presentation:]

A. As I remember from the previous discussion this was some kind of definition that had something to do with sexual harassment. So, that implies it's forcing to me. And I—there was never any issue of forcing in the case involving—well, any of these questions they were asking me. They made it clear in this discussion I just reviewed that what they were referring to was intentional sexual conduct, not some sort of forcible abusive behavior.

So I basically—I don't think I paid any attention to it because it appeared to me that that was something that had no reference to the facts that they admitted they were asking me about.

The President now took the position that the definition didn't apply to him because it would only have applied if he forced himself on Monica Lewinsky. Remember the definition. And I will read it again:

For the purposes of this deposition, a person engages in sexual relations when the person knowingly engages in or causes—

(1) contact with the [certain enumerated body parts] of any person with an intent to arouse or gratify the sexual desire of any person[.]

As you can see, this straightforward definition did not include the subject of force or harassment.

Yet when the independent counsel's attorney tried to clarify the President's newfound position, the President gave no ground. He simply plowed ahead with his new interpretation.

[Text of videotape presentation:]

Q. I'm just trying to understand, Mr. President. You indicated that you put the definition in the context of a sexual harassment case . . .

A. No, no, I think it was not in the context of sexual harassment. I just re-read those four pages, which obviously the grand jury doesn't have. But there was some reference to the fact that this definition apparently bore some—had some connection to some definition in another context and that this was being used not in that context, not necessarily in the context of sexual harassment.

So I would think that this causes would be—means to force someone to do something. That's what I read it. That's the only point I'm trying to make. Therefore, I did not believe that any one had ever suggested that I had forced anyone to do anything and I did not do that. And so, that could not have had any bearing on any questions relating to Ms. Lewinsky.

The evidence clearly shows from Monica Lewinsky's sworn testimony that the President deconstructed the English language to deny Paula Jones the opportunity to find out if other witnesses were out there who would help bolster her case against the President, and she was legally entitled to do that under our sexual harassment laws.

No reasonable interpretation of the President's testimony could be made that he fulfilled his legal obligation to testify to the truth, the whole truth, and nothing but the truth.

His statements were perjurious. They were designed to defeat Paula Jones' right to pursue her sexual harassment civil rights lawsuit against this President.

And by the way, in his testimony, the President conceded that if Monica Lewinsky's recitation of the facts was true, he would have perjured himself both in his deposition testimony and in repeating his denials before the grand jury. Listen to this.

[Text of videotape presentation:]

Q. And you testified that you didn't have sexual relations with Monica Lewinsky in the Jones deposition under that definition, correct?

A. That's correct, sir.

Q. If the person being deposed touched the genitalia of another person, would that be in—with the intent to arouse the sexual desire, arouse or gratify, as defined in definition one, would that be, under your understanding, then and now, sexual relations?

A. Yes, sir.

Q. Yes, it would?

A. Yes, it would if you had a direct contact with any of these places in the body, if you had direct contact with intent to arouse or gratify, that would fall within the definition.

Q. So you didn't do any of those three things with Monica Lewinsky?

A. You are free to infer that my testimony is that I did not have sexual relations as I understood this term to be defined.

So, who is telling the truth? The only way to really know is to bring forth the witnesses, put them under oath and give each juror, each Member of this body, the opportunity to make that determination of credibility because the record shows that Monica Lewinsky delivered consistent and detailed testimony under oath regarding many specific encounters with the President that clearly fell within the definition of sexual relations in the Jones deposition.

Monica Lewinsky's memory and accounts of these incidents are amazingly corroborated by her recollection of dates, places and phone calls which correspond with the official White House entrance logs and phone records.

Monica Lewinsky's testimony is further corroborated through DNA testing and the testimony of her friends and family members, to whom she made near contemporaneous statements about the relationship.

Most importantly, Monica Lewinsky had every reason to tell the truth to the grand jury. She was under a threat of prosecution for perjury, not only for her grand jury testimony but also for the false affidavit she filed on behalf of the President in the Jones case.

She knew then and she knows today that her immunity agreement could be revoked at any time if she lies under oath or if she lied under oath in the past. Truthful testimony was and remains a condition for her immunity from prosecution.

By way of contrast, the President was under obligation to give complete answers. Instead, he offered false answers that violated his oath to tell the truth, the whole truth, and nothing but the truth. And incidentally, during his grand jury testimony, the President actually suggested that he had a right to give less than complete answers. Why? Because he questioned the motives of Ms. Jones in bringing her lawsuit.

If this standard is acceptable, what does that do to the search for the truth when an oath is administered in a courtroom to one who claims to question the "motives" of their opponent in a trial? This suggestion has no basis in law. And it is destructive to the truth-seeking function of the courts.

The President's perjurious legal hairsplitting used to bypass the requirement of telling the complete truth denied Paula Jones her constitutional right to have her day in court and an orderly disposition of her claim in the sexual harassment case against the President.

To dismiss this conduct with a shrug because it is "just about sex" is to say that the sexual harassment laws protecting women in the workplace do not apply to powerful employers or others in high places of privilege. As one wag recently noted, if this case is "just about sex," then robbery is just a disagreement over money.

Next, the President perjured himself before the grand jury when he repeated previous perjured answers he gave in the deposition of the Paula Jones case. In his grand jury testimony in August, the President admitted he had to tell the truth, the whole truth, and nothing but the truth when he testified in the Paula Jones deposition.

The question to the President:

> Now, you took the same oath to tell the truth, the whole truth, and nothing but the truth on January 17th, 1998, in a deposition in the Paula Jones litigation; is that correct, sir?
>
> A. I did take an oath then.
>
> Q. Did the oath you took on that occasion mean the same to you then as it does today?
>
> A. I believe then that I had to answer the questions truthfully; that is correct.

When the President testified in his January deposition, he knew full well that Monica Lewinsky's affidavit filed in the case stating that they never had sexual relations was false. Yet when this affi-

davit was shown to him at the deposition, he testified that her false claim was, in his words, "absolutely true."

He knew that the definition of "sexual relations" used in the earlier Jones deposition was meant to cover the same activity that was mentioned in Monica Lewinsky's false affidavit. Rather than tell the complete truth, the President lied about the relationship, the cover stories, the affidavit, the subpoena for gifts, and the search for a job for Ms. Lewinsky.

Later he denied to the grand jury in August that he committed any perjury during his January deposition. This assertion before the grand jury that he testified truthfully in the Jones case is in and of itself perjurious testimony because the record is clear he did not testify truthfully in January in the Paula Jones case. He perjured himself.

Thus, when the President testified before the grand jury in August, he knew he had given perjurious answers in the January deposition. If the President really thought, as he testified, that he had told the truth in his January deposition testimony, he would not have related a false account of events to his secretary, Betty Currie, whom he knew, by his own admission, might be called as a witness in the Jones case; he would not have repeatedly denied he was unable to recall being alone with Monica Lewinsky; and he would not have told false accounts to his aides whom he knew, by his own admission, were potential witnesses in later proceedings.

The evidence of perjury and obstruction of justice is overwhelming in this case. He continued to use illegal means to defeat Ms. Jones' constitutional right to bring her harassment case against him.

Next, the President committed perjury before the grand jury when he testified that he did not allow his attorney to make false representations while referring to Monica Lewinsky's affidavit before the judge in the Jones case, an affidavit that he knew was false.

Remember, at the Jones deposition in January 1998, Monica Lewinsky previously had filed a false affidavit that said, "I have never had a sexual relationship with the President" and that she had no relevant information to provide on the subject to Ms. Jones.

When Ms. Jones' attorneys attempted to question the President about his relationship with Ms. Lewinsky, the President's attorney, Mr. Bennett, objected to him even being questioned about the relationship.

Mr. Bennett claimed that in light of Monica Lewinsky's affidavit saying that there was no sexual relationship between the two, and there never had been, that Paula Jones' lawyer had no good faith belief even to question the President about a relationship with Monica Lewinsky.

Listen to what Mr. Bennett told Judge Wright in the deposition.

[Text of videotape presentation:]

Mr. BENNETT. Your Honor, excuse me, Mr. President, I need some guidance from the Court at this point. I'm going to object to the innuendo. I'm afraid, as I say, that this will leak. I don't question the predicates here. I question the good faith of counsel, the innuendo in the question. Counsel is fully aware that Ms. Jane Doe 6 [Monica Lewinsky] has filed, has an affidavit which they are in possession of saying that there is absolutely no sex of any kind in any manner, shape or form, with President Clinton, and yet listening to the innuendo in the questions——

Judge WRIGHT. No, just a minute, let me make my ruling. I do not know whether counsel is basing this question on any affidavit, but I will direct Mr. Bennett not to comment on other evidence that might be pertinent and could be arguably coaching the witness at this juncture. Now, Mr. Fisher is an officer of this court, and I have to assume that he has a good faith basis for asking the question. If in fact he has no good faith basis for asking this question, he could later be sanctioned. If you would like, I will be happy to review in camera any good faith basis he might have.

Mr. BENNETT. Well, Your Honor, with all due respect, I would like to know the proffer. I'm not coaching the witness. In preparation of the witness for this deposition, the witness is fully aware of Ms. Jane Doe 6's (Monica Lewinsky's) affidavit, so I have not told him a single thing he doesn't know, but I think when he asks questions like this where he's sitting on an affidavit from the witness, he should at least have a good faith proffer.

Judge WRIGHT. Now, I agree with you that he needs to have a good faith basis for asking the question.

Mr. BENNETT. May we ask what it is, Your Honor?

Judge WRIGHT. And I'm assuming that he does, and I will be willing to review this in camera if he does not want to reveal it to counsel.

Mr. BENNETT. Fine.

Mr. FISHER. I would welcome an opportunity to explain to the Court what our good faith basis is in an in camera hearing.

Judge WRIGHT. All right.

Mr. FISHER. I would prefer that we not take the time to do that now, but I can tell the Court I am very confident there is substantial basis.

Judge WRIGHT. All right, I'm going to permit the question. He's an officer of the Court, and as you know, Mr. Bennett, this Court has ruled on prior occasions that a good faith basis can exist notwithstanding the testimony of the witness, of the deponent, and the other party.

May I say as an aside that by presenting that, I am in no way questioning the quality or the integrity of the President's attorney, Mr. Bennett, on that day. Mr. Bennett was doing his job as the President's lawyer. He had an affidavit from Monica Lewinsky that said none of this ever happened. And so I hope that none of you will assume that by my showing this deposition tape today I am trying to draw any unfair inference against the President's attorney on that date. But you can tell from what you have just observed that Mr. Bennett was using Monica Lewinsky's false affidavit in an attempt to stop questioning of the President about Ms. Lewinsky.

What did the President do during that exchange? He sat mute. He did not say anything to correct Mr. Bennett, even though the President knew that the affidavit upon which Mr. Bennett was relying was utterly false.

Judge Wright overruled Mr. Bennett's objection and allowed the questioning about Monica Lewinsky to proceed.

Later in the deposition, Mr. Bennett read to the President the portion of Ms. Lewinsky's affidavit in which she denied having a sexual relationship with the President. Mr. Bennett then asked the President, who was under oath, if Ms. Lewinsky's statement that they never had a sexual relationship was true and accurate.

Listen to the President as he responds.

[Text of videotape presentation:]

Q: In paragraph eight of her affidavit, she says this, "I have never had a sexual relationship with the President, he did not propose that we have a sexual relationship, he did not offer me employment or other benefits in exchange for a sexual relationship, he did not deny me employment or other benefits for reflecting a sexual relationship."

Is this a true and accurate statement as far as you know it?

A: That is absolutely true.

The President's answer: "That is absolutely true."

When President Clinton was asked during his grand jury testimony 8 months later how he could have sat silently at his earlier deposition while his attorney made the false statement that "there is no sex of any kind," in any manner, shape, or form, to Judge Wright, the President first said that he was not paying "a great deal of attention" to Mr. Bennett's comments.

[Text of videotape presentation:]

Q. Mr. President, I want to—before I go into a new subject area, briefly go over something you were talking about with Mr. Bittman. The statement of your attorney, Mr. Bennett, at the Paula Jones deposition—counsel is fully aware—it's page 54, line 5. "Counsel is fully aware that Ms. Lewinsky is filing, has an affidavit, which they were in possession of, saying that there was absolutely no sex of any kind in any manner, shape or form with President Clinton." That statement was made by your attorney in front of Judge Susan Webber Wright.

A. That's correct.

Q. Your—that statement is a completely false statement. Whether or not Mr. Bennett knew of your relationship with Ms. Lewinsky, the statement that there was "no sex of any kind in any manner, shape or form with President Clinton" was an utterly false statement. Is that correct?

A. It depends upon what the meaning of the word "is" means. If "is" means is, and never has been, that's one thing. If it means, there is none, that was a completely true statement. But as I have testified—I'd like to testify again—this is—it is somewhat unusual for a client to be asked about his lawyer's statements instead of the other way around. I was not paying a great deal of attention to this exchange. I was focusing on my own testimony.

The President added to this explanation he was giving to the attorney questioning him. This is what the President said:

And I'm not sure . . . as I sit here today that I sat there and followed all these interchanges between the lawyers. I'm quite sure that I didn't follow all the interchanges between the lawyers all that carefully. And I don't really believe, therefore, that I can say Mr. Bennett's testimony or statement is testimony and is imputable to me. I didn't—I don't know that I was really paying attention, paying that much attention to him.

This denial of the President while his attorney was proffering a false statement to Judge Wright in an effort to keep the Paula Jones lawyers from even questioning the President about his relationship with Monica Lewinsky simply does not withstand the test of truth. The videotape of the President's January deposition shows the President paying very close attention to Mr. Bennett when Mr. Bennett was making the statement about "no sex of any kind."

View again the video clip of the President during Mr. Bennett's argument that the Jones lawyers have no right to ask questions about Monica Lewinsky, only this time watch the President as he focuses on his lawyer speaking about one of the most important subjects he has ever faced in his entire life—the survival of his Presidency.

[Text of videotape presentation:]

Mr. BENNETT. Your Honor, excuse me, Mr. President, I need some guidance from the Court at this point. I'm going to object to the innuendo. I'm afraid, as I say, that this will leak. I don't question the predicates here. I question the good faith of counsel, the innuendo in the question. Counsel is fully aware that Ms. Jane Doe 6 [Monica Lewinsky] has filed, has an affidavit which they are in possession of saying that there is absolutely no sex of any kind in any manner, shape or form, with President Clinton, and yet listening to the innuendo in the questions——

Judge WRIGHT. No, just a minute, let me make my ruling. I do not know whether counsel is basing this question an any affidavit, but I will direct Mr. Bennett not to comment on other evidence that might be pertinent and could be arguably coaching the witness at this juncture. Now, I Mr. Fisher is as officer of this court, and

I have to assume that he has a good faith basis for asking the question. If in fact he has no good faith basis for asking this question, he could later be sanctioned. If you would like, I will be happy to review in camera any good faith basis he might have.

Mr. BENNETT. Well, Your Honor, with all due respect, I would like to know the proffer. I'm not coaching the witness. In preparation of the witness for this deposition, the witness is fully aware of Ms. Jane Doe 6's (Monica Lewinsky's) affidavit, so I have not told him a single thing he doesn't know, but I think when he asks questions like this where he's sitting on an affidavit from the witness, he should at least have a good faith proffer.

Judge WRIGHT. Now, I agree with you that he needs to have a good faith basis for asking the question.

Mr. BENNETT. May we ask what it is, Your Honor?

Judge WRIGHT. And I'm assuming that he does, and I will be willing to review this in camera if he does not want to reveal it to counsel.

Mr. BENNETT. Fine.

Mr. FISHER. I would welcome an opportunity to explain to the Court what our good faith basis is in an in camera hearing.

Judge WRIGHT. All right.

Mr. FISHER. I would prefer that we not take the time to do that now, but I can tell the Court I am very confident there is substantial basis.

Judge WRIGHT. All right, I'm going to permit the question. He's an officer of the Court, and as you know, Mr. Bennett, this Court has ruled on prior occasions that a good faith basis can exist notwithstanding the testimony of the witness, of the deponent, and the other party.

By the way, lest there be any doubt in the minds of any Member of this body as to whom the President was looking at and focusing at, we are fully prepared to bring in a witness for you who was present at the deposition and who will draw a map for every Member of this body and show the location of the President and every other person around the table.

Just in case the President's "I wasn't paying any attention" excuse didn't fly, the President, in his grand jury testimony, decided to try another argument on for size. He suggested that when Mr. Bennett made his statement about "there is no sex of any kind," the President was focusing on the meaning of the word "is."

He then said that when Mr. Bennett made the assertion that "there is no sex of any kind," Mr. Bennett was speaking only in the present tense, as if the President understood that to mean "there is no sex" because there was no sex occurring at the time Mr. Bennett's remark was made.

The President stated, "It depends on what the meaning of the word 'is' is."

And that if it means there is none, that was a completely true statement. Listen and watch again to the same video clip from the President's grand jury testimony that we saw a few moments ago. Only this time, pay close attention to the President's excuse as to why he did not have to comply with the truth, because in his mind there is some question as to what the meaning of the word "is" is.

[Text of videotape presentation:]

Q. Mr. President, I want to, before I go into a new subject area, briefly go over something you were talking about with Mr. Bittman. The statement of your attorney, Mr. Bennett, at the Paula Jones deposition "counsel is fully aware"—it's page 54 line 5.—"counsel is fully aware that Ms. Lewinsky has filed, has an affidavit which they were in possession of saying that there is no sex of any kind in any manner, shape or form, with President Clinton?" That statement is made by your attorney in front of Judge Susan Webber Wright, correct?

A. That's correct.

Q. That statement is a completely false statement. Whether or not Mr. Bennett knew of your relationship with Ms. Lewinsky, the statement that there was "no sex

of any kind in any manner, shape or form, with President Clinton," was an utterly false statement. Is that correct?

A. It depends on what the meaning of the word "is" is. If "is" means is, and never has been, that is one thing. If it means there is none, that was a completely true statement. But, as I have testified, and I'd like to testify again, this is—it is somewhat unusual for a client to be asked about his lawyer's statements, instead of the other way around. I was not paying a great deal of attention to this exchange. I was focusing on my own testimony.

In essence, here is what the President says in his own defense: I wasn't paying any attention to what my lawyer was saying when he offered the false affidavit on my behalf to the judge. However, if I was paying attention, I was focusing on the very narrow definition of what the word "is" is and the tense in which that was presented.

Now, I am a former prosecutor, and that is like the murderer who says: I have an ironclad alibi. I wasn't at the crime scene; I was home with my mother eating apple pie; but if I was there, it is a clear case of self-defense.

The President now asks this body of lawmakers to give acceptance to these ludicrous definitions of ordinary words and phrases. He asks you to believe this is what he really thought when he was asked if he ever had sexual relations with Monica Lewinsky, and when he was asked about her false affidavit.

By the way, as to the President's "tense" argument that he presented about what the meaning of the word "is" is, this fails to take into account another important fact. The false affidavit of Monica Lewinsky that Mr. Bennett was waiving that day before the judge made no such distinction. Her affidavit never said in the present tense, "I am not now having a sexual relationship with the President." Her affidavit said, "I have never had a sexual relationship with the President."

The President perjured himself when he said that Mr. Bennett's statement that there was no sex of any kind was "absolutely true," depending on what the meaning of the word "is" is.

The President did not admit to the grand jury that Mr. Bennett's statement was false because to do so would have been to admit that the term "sexual relations" as used in Ms. Lewinsky's affidavit meant "no sex of any kind." Admitting that would be to admit that he perjured himself previously in his grand jury testimony and in his deposition.

Now, interestingly, Ms. Lewinsky doesn't bother attempting to match the President's linguistic deconstructions of the English language. After she was granted immunity, Monica Lewinsky testified under oath that the part of her affidavit denying a sexual relationship with the President was a lie.

I read from page 204 of Ms. Lewinsky's testimony:

Q. Let me ask you a straightforward question. Paragraph 8—

Referring to her affidavit—

at the start says, "I have never had a sexual relationship with the President." Is that true?

A. No.

Thus, the President engaged in an evolving series of lies during his sworn testimony in order to cover previous lies he told in sworn testimony, and to conceal his conduct that obstructed justice in the

Paula Jones sexual harassment suit against him. He did this to deny Paula Jones her constitutional right to bring a case of sexual harassment against him and to sidetrack the investigation of the Office of Independent Counsel into his misconduct.

Finally, the President committed perjury before the grand jury when he testified falsely about his blatant attempts to influence the testimony of potential witnesses and his involvement in a plan to hide evidence that had lawfully been subpoenaed in the civil rights action brought against him.

This perjurious testimony breaks down into four categories:

First, he made false and misleading statements to the grand jury concerning his knowledge of Monica Lewinsky's false affidavit.

Second, he made false and misleading statements to the grand jury when he related a false account of his interaction with his secretary, Betty Currie, when he reasonably knew she might later be called before the grand jury to testify.

Third, he made perjurious and misleading statements to the grand jury when he denied engaging in a plan to hide evidence that had been subpoenaed in the Jones civil rights case against him.

Finally, he made perjurious and misleading statements to the grand jury concerning statements he made to his aides about Monica Lewinsky when he reasonably knew these aides might be called later to testify.

Let's look briefly at the first area.

The President made false and misleading statements before the grand jury regarding his knowledge of the contents of Monica Lewinsky's affidavit.

As we now know conclusively, Monica Lewinsky filed an affidavit in the Jones case in which she denied ever having a sexual relationship with the President, and that was a lie when it was filed.

Remember, during his deposition in the Jones case, the President said that Ms. Lewinsky's denial of ever having a sexual relationship was "absolutely true."

Monica Lewinsky later testified that she is "100 percent sure" that the President suggested she might want to sign an affidavit to avoid testifying in the case of Jones versus Clinton. In fact, the President gave the following testimony before the grand jury:

> And did I hope she'd be able to get out of testifying on an affidavit? Absolutely. Did I want her to execute a false affidavit? No, I did not.

This testimony is false because it could not be possible that Monica Lewinsky could have filed a truthful affidavit in the Jones case, an affidavit acknowledging a sexual relationship with the President, that would have helped her to avoid having to appear as a witness in the Paula Jones case.

The attorneys for Paula Jones were seeking evidence of sexual relationships with the President and ones that the President might have had with other State or Federal employees.

This information was legally obliged to be produced by the President to Paula Jones in her sexual harassment lawsuit against him to help prove her claim.

Judge Susan Webber Wright had already ruled that Paula Jones was entitled to this information from the President for purposes of discovery.

If Monica Lewinsky had filed a truthful affidavit that acknowledged a sexual relationship with the President, then she certainly could not have avoided having to testify in a deposition.

The President knew this.

His grand jury testimony on this subject is perjury.

Next, the President provided false testimony concerning his conversations with his personal secretary, Betty Currie, about Monica after he testified in the Jones deposition.

Recall Mr. Manager HUTCHINSON's presentation a short time ago. The President had just testified on January 17, 1998, in the Paula Jones deposition. He said he could not recall being alone with Monica Lewinsky and that he did not have a sexual relationship with her.

After his testimony, on the very next day and in a separate conversation with her a few days later, President Clinton made statements to Ms. Currie that he knew were false.

He made them to coach Ms. Currie and to influence her potential future testimony.

He coached her by reciting inaccurate answers to possible questions that she might be asked if she were called to testify in the Paula Jones case.

By the way, the President discussed his deposition testimony with Ms. Currie in direct violation of Judge Wright's order that he not discuss his testimony with anyone. Judge Wright warned the President at the deposition:

> Before he leaves, I want to remind him, as the witness in this matter, . . . that this case is subject to a Protective Order regarding all discovery, . . . [A]ll parties present, including . . . the witness are not to say anything whatsoever about the questions they were asked, the substance of the deposition, . . ., any details . . .

After he coached her, the President wanted Betty Currie to be a witness.

During his deposition testimony, the President did everything he could to suggest to the Jones lawyers they needed to depose Betty Currie. He did this by referring to her over and over again as the one with the information they needed for information about him and Monica Lewinsky.

He stated to the Jones lawyer in his deposition, for example, that:

> . . . the last time he had seen Ms. Lewinsky was when she had come to the White House to see Ms. Currie; that Ms. Currie was present when the President had made a joking reference about the Jones case to Ms. Lewinsky; that Ms. Currie was his source of information about Vernon Jordan's assistance to Ms. Lewinsky; and that Ms. Currie had helped set up the meetings between Ms. Lewinsky and Mr. Jordan regarding her move to New York.

Because the President referred so often to Ms. Currie, it is obvious he wanted her to become a witness in the Jones matter, particularly if specific allegations of the President's relationship with Ms. Lewinsky came to light.

According to Ms. Currie, President Clinton even told her at some point that she might be asked about Monica Lewinsky.

Two and a half hours after he returned from the Paula Jones deposition, President Clinton called Ms. Currie at home and asked her to come to the White House the next day, a Sunday.

Ms. Currie testified that it was rare for the President to ask her to come in on a Sunday.

At about 5:00 p.m. on Sunday, January 18, Ms. Currie went to meet with President Clinton at the White House.

Listen to what Betty Currie told the grand jury:

> He said that he had had his deposition yesterday, and they had asked several questions about Monica Lewinsky. And I was a little shocked by that or—(shrugging). And he said—I don't know if he said—I think he may have said, "There are several things you may want to know," or "There are things—" He asked me some questions.

According to Ms. Currie, the President then said to her in rapid succession:

> You were always there when she was there, right? We were never really alone. You could see and hear everything.
> Monica came on to me, and I never touched her, right?
> She wanted to have sex with me, and I can't do that.

Ms. Currie indicated that these remarks were "more like statements than questions."

Ms. Currie concluded that the President wanted her to agree with him.

Ms. Currie also said that she felt the President made these remarks to see her reaction.

Ms. Currie said that she indicated her agreement with each of the President's statements, although she knew that the President and Ms. Lewinsky had in fact been alone in the Oval Office and in the President's study.

Ms. Currie also knew that she could not and did not hear or see the President and Ms. Lewinsky while they were alone.

Ms. Currie testified that two or three days after her conversation with the President at the White House, he again called her into the Oval Office to discuss this.

She described their conversation as "sort of a recapitulation of what we had talked about on Sunday—you know, I was never alone with her—that sort of thing."

> Q: [To Ms. Currie] Did he pretty much list the same?
> A: To my recollection, sir, yes.

In his grand jury testimony, the President was asked why he might have said to Ms. Currie in their meeting on that Sunday: We were never alone together, right? You could see and hear everything.

Here is how the President testified:

> [W]hat I was trying to determine was whether my recollection was right and that she was always in the office complex when Monica was there, and whether she thought she could hear any conversations we had, or did she hear any—I was trying to—I knew . . . to a reasonable certainty that I was going to be asked more questions about this. I didn't really expect you to be in the Jones case at the time. I thought what would happen is that it would break in the press, and I was trying to get the facts down. I was trying to understand what the facts were.

The President told the grand jury that he was putting those questions to Betty Currie on that Sunday to refresh his recollection and trying to pin down what the facts were.

Later, the President stated that he was referring to a larger area than simply the room where he and Ms. Lewinsky were located. He

also testified that his statements to Ms. Currie were intended to cover a limited range of dates.

Listen to the President's answer.

A: [W]hen I said, we were never alone, right, I think I also asked her a number of other questions, because there were several times, as I'm sure she would acknowledge, when I either asked her to be around. I remember once in particular when I was talking with Ms. Lewinsky when I asked Betty to be in the, actually, in the next room in the dining room, and, as I testified earlier, once in her own office. But I meant that she was always in the Oval Office complex, in that complex, while Monica was there. And I believe that this was part of a series of questions I asked her to try to quickly refresh my memory. So, I wasn't trying to get her to say something that wasn't so. And, in fact, I think she would recall that I told her to just relax, go in the grand jury and tell the truth when she had been called as a witness.

Now the President was treating the grand jury to his construction of what the word "alone" means to him.

When asked he answered:

It depends on how you define alone, and there were a lot of times when we were alone, but I never really thought we were.

The President also was asked about his specific statement to Betty Currie that "you could see and hear everything." He testified that he was uncertain what he intended by that comment:

Question to the President:

Q: When you said to Mrs. Currie, you could see and hear everything, that wasn't true either, was it, as far as you knew. . . .

A: My memory of that was that, that she had the ability to hear what was going on if she came in the Oval Office from her office. And a lot of times, you know, when I was in the Oval Office, she just had the door open to her office. Then there was—the door was never completely closed to the hall. So I think there was—I'm not entirely sure what I meant by that, but I could have meant that she generally would be able to hear conversations, even if she couldn't see them. And I think that's what I meant.

The President also was asked about his comment to Ms. Currie that Ms. Lewinsky had "come on" to him, but that he had "never touched her."

Question to the President:

Q: [I]f [Ms. Currie] testified that you told her, Monica came on to me and I never touched her, you did, in fact, of course, touch Ms. Lewinsky, isn't that right, in a physically intimate way?

A: Now, I've testified about that. And that's one of those questions that I believe is answered by the statement that I made.

Q: What was your purpose in making these statements to Mrs. Currie, if it weren't for the purpose to try to suggest to her what she should say if ever asked?

A: Now, Mr. Bittman, I told you, the only thing I remember is when all this stuff blew up, I was trying to figure out what the facts were. I was trying to remember. I was trying to remember every time I had seen Ms. Lewinsky. . . . I knew this was all going to come out. . . . I did not know [at the time] that the Office of Independent Counsel was involved. And I was trying to get the facts and try to think of the best defense we could construct in the face of what I thought was going to be a media onslaught.

Finally, the President was asked why he would have called Ms. Currie into his office a few days after the Sunday meeting and repeated the statements about Ms. Lewinsky to her.

The President testified that although he would not dispute Ms. Currie's testimony to the contrary, he did not remember having a second conversation with her along these lines.

Thus, the President referred to Ms. Currie many times in his deposition when describing his relationship with Ms. Lewinsky.

He himself admitted that a large number of questions about Ms. Lewinsky were likely to be asked in the very near future.

The President reasonably could foresee that Ms. Currie either might be deposed or questioned or might need to prepare an affidavit.

When he testified he was only making statements to Ms. Currie to "ascertain what the facts were, trying to ascertain what Betty's perception was," this statement was false, and it was perjurious.

We know it was perjury because the President called Ms. Currie into the White House the day after his deposition to tell her—not ask her, to tell her—that:

he was never alone with Ms. Lewinsky;
to tell her that Ms. Currie could always hear or see them;
and to tell her that he never touched Ms. Lewinsky.

These were false statements, and he knew that the statements were false at the time he made them to Betty Currie.

The President's suggestion that he was simply trying to refresh his memory when talking to Betty Currie is nonsense.

What if Ms. Currie had confirmed these statements, statements the President knew were false? It could not in any way remind the President of what really happened in the Oval Office with Monica Lewinsky because the President already knew he was alone with Monica Lewinsky. The President already knew that obviously Ms. Currie could not always see him back in the Oval Office area with Monica Lewinsky. And the President already knew that he had an intimate sexual relationship with Monica Lewinsky.

There is no logical way to justify his claim that he made these statements to Ms. Currie to refresh his recollection.

The only reasonable inference from the President's conduct is that he tried to enlist a potential witness to back up his perjury from the day before at the deposition.

The circumstances surrounding the President's statements clearly show, clearly show that he improperly sought to influence Ms. Currie's potential future testimony.

His actions were an obstruction of justice and a blatant attempt to illegally influence the truthful testimony of a potential witness.

And his later denials about it under oath were perjurious.

Next, the President gave perjurious, false, and misleading testimony before the grand jury when he denied he was engaged in a plot to hide evidence that had been subpoenaed in the Paula Jones case.

On December 19, 1997, Monica Lewinsky was served with a subpoena in the Paula Jones case.

The subpoena required her to testify at a deposition in January, and the subpoena required her to produce each and every gift President Clinton had given her.

Nine days after she received this subpoena, Ms. Lewinsky met with the President for about 45 minutes in the Oval Office.

By this time, President Clinton knew that she had been subpoenaed in the case.

At this meeting they discussed the fact that the gifts that he had given Monica Lewinsky had been subpoenaed, including a hat pin—the first gift the President had ever given Ms. Lewinsky.

Monica Lewinsky testified that at some point in this meeting she said to the President,

> Well, you know, I—maybe I should put the gifts away outside my house somewhere or give them to someone, maybe Betty.
>
> And he sort of said—I think he responded, "I don't know" or "Let me think about that." And left that topic.

President Clinton provided the following explanation to the grand jury and to the House Judiciary Committee regarding this conversation:

> Ms. Lewinsky said something to me like, "what if they ask me about the gifts you've given me," but I do not know whether that conversation occurred on December 28, 1997, or earlier.
>
> Whenever this conversation occurred, I testified, I told her "that if they [the Jones Lawyers] asked her for gifts, she'd have to give them whatever she had. . . ."
>
> I simply was not concerned about the fact that I had given her gifts. Indeed, I gave her additional gifts on December 28, 1997.

The President's statement that he told Ms. Lewinsky that if the attorneys for Paula Jones asked for the gifts, then she had to provide them, is perjurious.

It strains all logic to believe the President would encourage Monica Lewinsky to turn over the gifts. To do so would have raised questions about their relationship and would go against all of their other efforts to conceal the relationship, including filing a false affidavit about their relationship. The fact that the President gave Monica Lewinsky additional gifts on December 28, 1998, doesn't exonerate the President. It demonstrates that the President never believed that Monica Lewinsky in light of all of their relationship, all of the cover stories, all of the plans that they had put forward, her willingness to subject herself to a perjury prosecution by filing a false affidavit, all of that was because he knew that Monica Lewinsky would never turn those gifts over pursuant to the subpoena. And as Ms. Lewinsky testified, she never questioned, as she said, "that we were ever going to do anything but keep this quiet."

This meant that they would take, in her words, "whatever steps needed to be taken" to keep it quiet.

By giving more gifts to Monica Lewinsky after she received a subpoena to appear in the Jones case, the President believed that Monica Lewinsky would never testify truthfully about their relationship.

Additionally, Ms. Lewinsky said she could not answer why the President would give her more gifts on the 28th when he knew she had to produce gifts in response to the subpoena. She did testify, however, that——

> To me it was never a question in my mind and I—from everything he said to me, I never questioned him, that we were never going to do anything but keep this private, so that meant deny it and that meant do—take whatever appropriate steps needed to be taken, you know, for that to happen. . . . So by turning over these gifts, it would at least prompt [the Jones attorneys] to question me about what kind of friendship I had with the President. . . .

After this meeting on the morning of December 28, Betty Currie called Monica Lewinsky and made arrangements to pick up gifts the President had given to Ms. Lewinsky.

Monica Lewinsky testified under oath before the grand jury that a few hours after meeting with the President on December 28,

1997, where they discussed what to do about the gifts he gave to her, Betty Currie called Monica Lewinsky.

Monica Lewinsky explained it to the grand jury as follows:

Q. What did [Betty Currie] say?
A. She said, "I understand you have something to give me." Or, "The President said you have something to give me." Along those lines. . . .
Q. When she said something along the lines of "I understand you have something to give me," or "The President says you have something for me," what did you understand her to mean?
A. The gifts.

Later in the day on December 28, Ms. Currie drove to Monica Lewinsky's home.

Ms. Lewinsky gave Ms. Currie a sealed box that contained several gifts Ms. Lewinsky had received from the President, including the hatpin that was specifically named in the Jones subpoena.

As further corroboration, Monica Lewinsky had told the FBI earlier that when Betty Currie called her about these gifts, it sounded like Betty Currie was calling on her cell phone. Ms. Lewinsky gave her best guess on the time of day the call came on December 28.

Although Ms. Lewinsky's guess on the hour the call came was a bit off, phone records were later produced revealing that Betty Currie in fact called Monica Lewinsky on her cell phone, just as Ms. Lewinsky had described it. The only logical conclusion is that Betty Currie called Monica Lewinsky about retrieving the President's gifts. There would have been no reason for Betty Currie, out of the blue, to return gifts unless instructed to do so by the President. Betty Currie didn't know about the gift issue ahead of time. Only the President and Monica Lewinsky had discussed it. There is no other way Ms. Currie could have known to call Monica Lewinsky about the gifts unless the President told her to do it.

President Clinton perjured himself when he testified before the grand jury on this issue and reiterated to the House Judiciary Committee that he did not recall any conversation with Ms. Currie around December 28. He also perjured himself when he testified before the grand jury that he did not tell Betty Currie to take possession of the gifts that he had given Ms. Lewinsky.

Question to the President:

After you gave her the gifts on December 28th, did you speak with your secretary, Ms. Currie, and ask her to pick up a box of gifts that were some compilation of gifts that Ms. Lewinsky would have——
A. No, sir, I didn't do that.
Q. —to give to Ms. Currie?
A. I did not do that.

The President had a motive to conceal the gifts because both he and Ms. Lewinsky were concerned that the gifts might raise questions about their relationship. By confirming that the gifts would not be produced, the President ensured that these questions would never arise. The concealment of these gifts from Paula Jones' attorneys allowed the President to provide perjurious statements about the gifts at his deposition in the Jones case.

Finally, the President gave perjurious testimony to the grand jury concerning statements he gave to his top aides regarding his relationship with Monica Lewinsky. Here is a portion of his grand jury transcript, when the President testified about his conversation with key aides, once the Monica Lewinsky story became public.

Question to the President:

Q. Did you deny to them or not, Mr. President?

A. . . . I did not want to mislead my friends, but I want to define language where I can say that. I also, frankly, do not want to turn any of them into witnesses because I—and sure enough, they all became witnesses.

Q. Well, you knew they might be witnesses, didn't you?

A. And so I said to them things that were true about this relationship. That I used—in the language I used, I said, there is nothing go[ing] on between us. That was true. I said, I have not had sex with her as I defined it. That was true. And did I hope that I would never have to be here on this day giving this testimony? Of course. But I also didn't want to do anything to complicate this matter further. So, I said things that were true. They may have been misleading, and if they were, I have to take responsibility for it, and I'm sorry.

The President's testimony that day that he said things that were true to his aides is clearly perjurious. Just as the President predicted, several of the President's top aides were later called to testify before the grand jury as to what the President told them. And when they testified before the grand jury they passed along the President's false account, just as the President intended them to do.

I will not belabor the point any further with the Members of this body because I think Mr. Manager HUTCHINSON ably presented that testimony.

But we know from the evidence that Erskine Bowles, John Podesta, Sidney Blumenthal, all came before the grand jury. They all provided testimony to the grand jury establishing that the President's comments to them were the truth. The President had them go in. The President gave them that information so false information would be shared with the grand jury so that the grand jury would never be armed with the truth. And when witnesses are called to come before this body, you will have an opportunity to make that determination.

Mr. Chief Justice and Members of the United States Senate, posterity looks to this body to defend in a courageous way the public trust and take care that the basis of our Government is not undermined. On January 17, 1998, President Clinton, while a defendant in a civil rights sexual harassment lawsuit, gave sworn testimony in a deposition presided over by a Federal judge. In this deposition he raised his hand and he swore to tell the truth, the whole truth, and nothing but the truth.

On August 17, President Clinton testified before a Federal grand jury in a criminal investigation. At this appearance he raised his hand and he swore to tell the truth, the whole truth, and nothing but the truth. The evidence conclusively shows that the President rejected his obligations under oath on both occasions. He engaged in a serial pattern of perjury and obstruction of justice. These corrupt acts were done so he could deny a U.S. citizen, Ms. Paula Jones, her constitutional right to bring her claim against him in a court of law. In so doing, he intentionally violated his oath of office, his constitutional duty to take care that the laws be faithfully executed, and his solemn obligation to respect Ms. Jones' rights by providing truthful testimony under oath.

The evidence reviewed by the House of Representatives and relied upon by our body in bringing articles of impeachment against the President was not political. It was overwhelming. He has de-

nied all allegations set forth in these articles. Who is telling the truth? There is only one way to find out.

On behalf of the House of Representatives, we urge this body to bring forth the witnesses and place them under oath. If the witnesses can make the case against the President, if the witnesses that make the case against the President—who, incidentally, are his employees, his top aides, his former interns, and his close friends—if all of these people in the President's universe are lying, then the President has been done a grave disservice. He deserves not just an acquittal; he deserves the most profound of apologies.

But if they are not lying, if the evidence is true, if the Chief Executive Officer of our Nation used his power and his influence to corruptly destroy a lone woman's right to bring forth her case in a court of law, then there must be constitutional accountability, and by that I mean the kind of accountability the framers of the Constitution intended for such conduct and not the type of accountability that satisfies the temporary mood of the moment.

Our Founders bequeathed to us a Nation of laws, not of polls, not of focus groups, and not of talk show habitues. America is strong enough to absorb the truth about their leaders when those leaders act in a manner destructive to their oath of office. God help our country's future if we ever decide otherwise.

The CHIEF JUSTICE. The Chair recognizes the majority leader.

ADJOURNMENT UNTIL 1 P.M. TOMORROW

Mr. LOTT. Mr. Chief Justice, I ask unanimous consent that the court stand in adjournment until 1 p.m. tomorrow, and that all Members remain standing at their desks as the Chief Justice departs the Chamber. I further ask that after the court adjourns in a moment, the Senate will, while in legislative session, stand in recess subject to the call of the Chair.

The CHIEF JUSTICE. Without objection, it is so ordered.

Thereupon, at 6:59 p.m., the Senate, sitting as a Court of Impeachment, adjourned.

III

106TH CONGRESS
1ST SESSION

S. RES. 17

To authorize the installation of appropriate equipment and furniture in the Senate chamber for the impeachment trial.

IN THE SENATE OF THE UNITED STATES

JANUARY 14, 1999

Mr. LOTT submitted the following resolution; which was considered and agreed to

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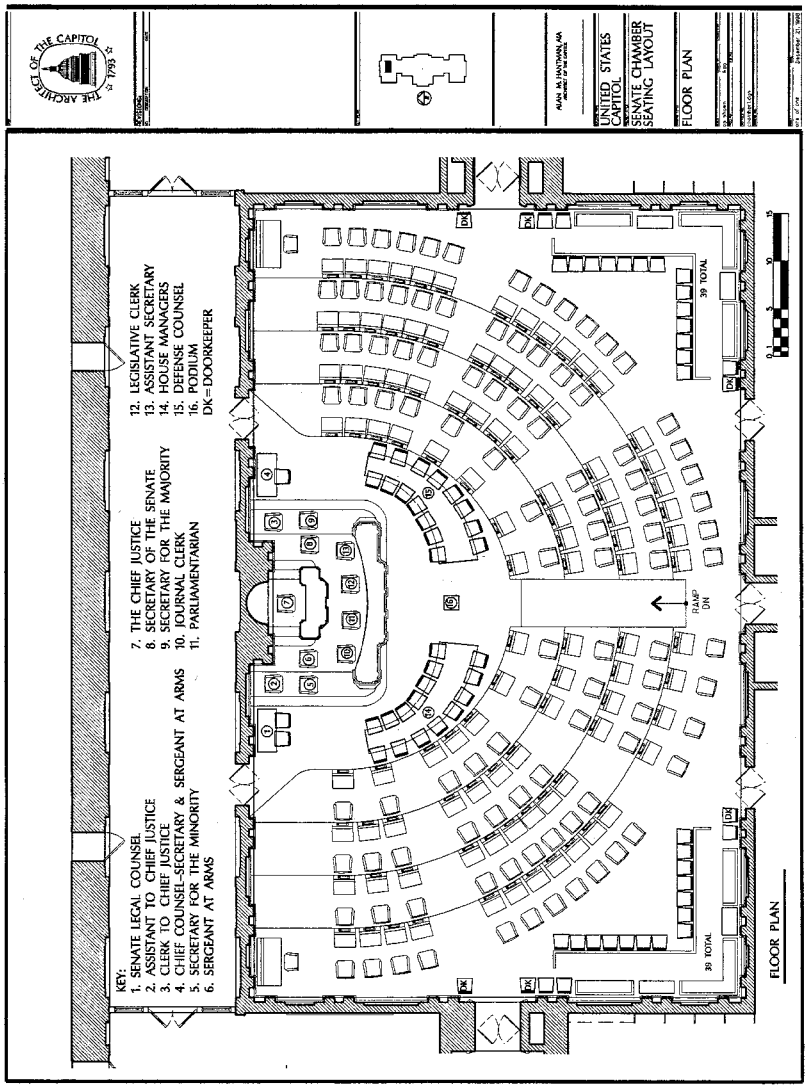
RESOLUTION

To authorize the installation of appropriate equipment and furniture in the Senate chamber for the impeachment trial.

Resolved, That in recognition of the unique requirements raised by the impeachment trial of a President of the United States, the Sergeant at Arms shall install appropriate equipment and furniture in the Senate chamber for use by the managers from the House of Representatives and counsel to the President in their presentations to the Senate during all times that the Senate is sitting for trial with the Chief Justice of the United States presiding.

1 SEC. 2. The appropriate equipment and furniture re-
2 ferred to in the first section is as follows:
3 (1) A lectern, a witness table and chair if re-
4 quired, and tables and chairs to accommodate an
5 equal number of managers from the House of Rep-
6 resentatives and counsel for the President which
7 shall be placed in the well of the Senate.
8 (2) Such equipment as may be required to per-
9 mit the display of video, or audio evidence, including
10 video monitors and microphones, which may be
11 placed in the chamber for use by the managers from
12 the House of Representatives or the counsel to the
13 President.
14 SEC. 3. All equipment and furniture authorized by
15 this resolution shall be placed in the chamber in a manner
16 that provides the least practicable disruption to Senate
17 proceedings.

O


THE ARCHITECT OF THE CAPITOL
1793
UNITED STATES CAPITOL
SENATE CHAMBER SEATING LAYOUT
FLOOR PLAN
KEY:
1. SENATE LEGAL COUNSEL
2. ASSISTANT TO CHIEF JUSTICE
3. CLERK TO CHIEF JUSTICE
4. CHIEF COUNSEL-SECRETARY & SERGEANT AT ARMS
5. SECRETARY FOR THE MINORITY
6. SERGEANT AT ARMS
7. THE CHIEF JUSTICE
8. SECRETARY OF THE SENATE
9. SECRETARY FOR THE MAJORITY
10. JOURNAL CLERK
11. PARLIAMENTARIAN
12. LEGISLATIVE CLERK
13. ASSISTANT SECRETARY
14. HOUSE MANAGERS
15. DEFENSE COUNSEL
16. PODIUM
DK=DOORKEEPER
39 TOTAL
39 TOTAL
FLOOR PLAN

FRIDAY, JANUARY 15, 1999

[From the Congressional Record]

The Senate met at 1:02 p.m. and was called to order by the Chief Justice of the United States.

TRIAL OF WILLIAM JEFFERSON CLINTON, PRESIDENT OF THE UNITED STATES

The CHIEF JUSTICE. The Senate will convene as a Court of Impeachment. The Chaplain will offer a prayer.

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Holy God, with awe and wonder we accept our responsibilities and our accountability to You. You are Sovereign of this land. When we commit our complexities to You, really seek Your guidance, You direct us. Make us attentive listeners, dedicated to the search for absolute truth. In the cacophony of voices, help us to hear Your voice.

Dear Father, Your faithfulness never fails. You are consistent, reliable, and true. You expect nothing less from us for Your glory and for the good of America. To that end, fill this Chamber with Your presence and the minds of the Senators with Your gift of discernment. You are our Lord and Saviour. Amen.

The CHIEF JUSTICE. The Sergeant at Arms will make the proclamation.

The Sergeant at Arms, James W. Ziglar, made proclamation as follows:

Hear ye! Hear ye! Hear ye! All persons are commanded to keep silent, on pain of imprisonment, while the Senate of the United States is sitting for the trial of the articles of impeachment exhibited by the House of Representatives against William Jefferson Clinton, President of the United States.

The CHIEF JUSTICE. The majority leader is recognized.

Mr. LOTT. Mr. Chief Justice, there have been a number of inquiries from Senators and others about some clarification with regard to the approximate times or the times we would be meeting on Saturday and Tuesday, and also how the afternoon would proceed, so I will make some unanimous consent requests to clarify that and give you a brief rundown on what I think the schedule will be this afternoon.

ORDERS FOR SATURDAY, JANUARY 16, 1999 AND TUESDAY, JANUARY 19, 1999

Mr. Chief Justice, as in legislative session, I ask unanimous consent that when the Senate completes its business today it stand in adjournment until 10 a.m., on Saturday, January 16. I further ask that when the Senate reconvenes on Saturday, immediately following the prayer, the Senate resume consideration of the articles of impeachment.

The CHIEF JUSTICE. Without objection, it is so ordered.

Mr. LOTT. I further ask unanimous consent that when the Senate completes its business on Saturday, it then adjourn over until Tuesday, January 19, at 9:30 a.m. I ask unanimous consent that on Tuesday, immediately following the prayer, the Journal of proceedings be approved to date, the morning hour be deemed to have expired, and the time for the two leaders be reserved for their use. I further ask consent that there then be a period for morning business until the hour of 11:30 a.m., with 60 minutes under the control of the majority leader or his designee and 60 minutes under the control of the minority leader or his designee.

I ask unanimous consent that on Tuesday the Senate recess then from the hours of 11:30 a.m. until 1 p.m. for the weekly policy conferences. And I further ask consent that at 1 p.m., on Tuesday, the Senate resume consideration of the articles of impeachment.

The CHIEF JUSTICE. Without objection, it is so ordered.

Mr. LOTT. Mr. Chief Justice, I ask unanimous consent that on Tuesday, following the conclusion of the presentation during the Court of Impeachment, the Senate recess until the hour of 8:35 p.m., on Tuesday evening. And I ask consent that upon reconvening Tuesday evening the Senate proceed to the Hall of the House of Representatives in order to hear an address by the President regarding the State of the Union.

The CHIEF JUSTICE. Without objection, it is so ordered.

ORDER OF PROCEDURE

Mr. LOTT. For the information of all my colleagues, then, I understand today's presentation is expected to continue until approximately 6 p.m., and there will be periodic breaks during the day to allow all Members to stand and stretch. I want to remind Senators to promptly return to their desks at the expiration of those 15-minute breaks in order that we can continue and complete at the earliest possible hour. I thank all Members for their cooperation.

This afternoon we will hear from Congressman MCCOLLUM, take a 15-minute break, then hear from Congressmen GEKAS, CHABOT, and CANNON, and then take a break, and then Congressman BARR would complete the afternoon's presentations.

Mr. Chief Justice, I yield the floor.

THE JOURNAL

The CHIEF JUSTICE. If there is no objection, the Journal of proceedings of the trial is approved to date.

Pursuant to the provisions of Senate Resolution 16, the managers for the House of Representatives have 18 hours 56 minutes remaining to make the presentation of their case. The Senate will now hear you.

The Presiding Officer recognizes Mr. Manager MCCOLLUM to resume the presentation of the case for the House of Representatives.

Mr. Manager MCCOLLUM. Thank you, Mr. Chief Justice.

Mr. Chief Justice, and my colleagues in the Senate, I drove in this morning to this Capitol. I drove up the George Washington Parkway, and I looked at the magnificent display of ice that was all over the trees, all over the grass, all over the foliage—a beautiful panorama.

And just before I got to the 14th Street Bridge, I saw this incredible number of geese—I guess in the hundreds—that were lined up together between the highway and the Potomac River. It looked like they were an invading army. I thought of the awe of this, the awe of the beauty of it, the awe of Mother Nature, the awe of God. And I thought, also, of the awe of the responsibility we have to our children and our grandchildren about what we are commencing today. This is an awesome undertaking for all of us.

I am here today to summarize for you what you heard yesterday. I do not want to bore you. I do not intend to do that. I am going to be as brief as I can. I am also here to help you digest the voluminous quantities of material that you have before you. There is a huge record out there. And I am also here to prepare you for the law discussion that is going to come after me about the law of the crimes of perjury and obstruction of justice and witness tampering.

First of all, I want you to know I bear no personal animosity toward our President. But I happen to believe that if the President—if any President—commits the crimes of perjury, obstruction of justice, and witness tampering, he should not be allowed to remain in office, for if he is allowed to do so, it would undermine our courts and our system of justice.

But that is for you to determine in the end, really, not me. That is my opinion. But you will have to weigh the evidence, you are going to have to hear the arguments, and ultimately make that decision. In fact, the first thing you have to determine is whether or not the President committed crimes. It is only if you determine he committed the crimes of perjury, obstruction of justice, and witness tampering that you will move on to the question of whether he is removed from office. In fact, no one, none of us, would argue to you that the President should be removed from office unless you conclude he committed the crimes that he is alleged to have committed—not every one of them necessarily, but certainly a good quantity, and there are a whole bunch of them that have been charged.

I would like to call your attention to a couple of things. First of all, I don't want to be a schoolteacher; I just want to relate my own experience to you so you can understand it. I have been involved with this a lot longer than most of you have probably been dealing with the details. I constantly have to refer back to things. Every time I read something, there is so much detail here, I learn something new.

While I go over the evidence with you, we will summarize the evidence one more time. As you are deliberating, as you are thinking about it, I want to call a couple of places to your attention that are the easiest places to refer back to, to find the facts and evidence. First of all, there is the official report that is in the record of the House's consideration of this, the Judiciary Committee report. In that report, right in the first couple of pages, there is a table of contents. While a couple of the articles did not come over to you that are listed in here, there are detailed discussions you can get from this table of contents as to every single count and every single part of these articles so you can figure out what we are talking about today.

Secondly, I would like to bring to your attention that there is a Starr Report, and I know that has been maligned by some people. This thing is so dogeared—I have underlined it, torn it apart, done all kinds of things with it. It is a good reference source. You can find from the footnotes where else to check it out. There are two parts. These are the appendices. In the first part, you can find the transcript of all the key depositions, all the key testimony, all of the evidence that we are talking about, and read it for yourselves.

I don't want to leave here today having summarized this evidence, as long as I may take—and I don't want to take a long time, but I will take a little while—and have you go away and think, gosh, what all did MCCOLLUM or HUTCHINSON or ROGAN or BRYANT say yesterday? You can find and refresh yourself through that and through whatever information you have—trial briefs and all that you have.

Let's look at what the record shows. President Clinton was sued by Paula Jones in a sexual harassment civil rights lawsuit. To bolster her case, she was trying to show that the President engaged in a pattern of illicit relations with women in his employment, where he rewarded those who became involved with him and disadvantaged those who rejected him, as Paula Jones did.

Whatever the merits of that approach, on May 27, 1997, the U.S. Supreme Court ruled in a unanimous decision that "like every other citizen"—and that is a quote—"like every other citizen, Paula Jones has a right to an orderly disposition of her claims." Then on December 11 of 1997, Judge Susan Webber Wright issued an order that said Paula Jones was entitled to information regarding any State or Federal employee with whom the President had sexual relations, proposed sexual relations, or sought to have sexual relations.

The record shows that President Clinton was determined to hide his relationship with Monica Lewinsky from the Jones court. His lawyers will argue to you next week, I am sure, that he did everything to keep the relationship hidden and he did it in a legal way. They will say that he may have split a few hairs and evaded answers and given misleading answers but that it was all within the framework of responses and actions that any good lawyer would advise his client to do.

They will also say if he crossed the line technically somewhere, he didn't do it knowingly or intentionally. Oh, how I wish that were true. We wouldn't be here today. But, alas, that is not so.

If you believe the sworn testimony of Monica Lewinsky, if you believe her testimony that is in the record—and she is very credible—the President knowingly, intentionally, and willfully set out on a course of conduct in December 1997 to lie to the Jones court, to hide his relationship, and to encourage others to lie and hide evidence and to conceal the relationship with Monica Lewinsky from the court. He engaged in a pattern of obstruction of justice, perjury, and witness tampering designed to deny the court what Susan Webber Wright, the judge in that court, had determined Paula Jones had the right to discover in order to prove her claim. If you believe the testimony of Monica Lewinsky, you cannot believe the President or accept the argument of his lawyers. You simply can't.

The record is so clear on this that if you have any significant doubt about Monica Lewinsky's credibility or testimony, you should bring her in here and let us examine her face to face so you can judge her credibility for yourself.

As you will hear explained later this afternoon, the same acts can constitute both the crimes of obstruction of justice and perjury, and the same acts can constitute the crimes of obstruction of justice and witness tampering. They are all cut from the same cloth. They are all crimes that obstruct the administration of justice and keep our courts from being able to get the evidence that they need to decide cases. Such obstruction is so detrimental to our system of justice that the Federal Sentencing Guidelines provide for a greater punishment for perjury and obstruction of justice than they do for bribery.

I want to show that to you. I know everybody can't see the chart. I think you have a handout of them. I will not show many charts today, but this is one about the sentencing guidelines. The guidelines rate these, in fact, in sequence. The most serious sentencing is a higher number; the lower number is the lower sentencing: Plain old vanilla bribery rights at a 10; other things are 8, 7, 4. Murder is way up there, much higher in the numbers. You will see that witness tampering is a 12, not a 10. Obstruction of justice is a 12, not a 10. Perjury is a 12, not a 10. All of them are the same. Interestingly enough, although I didn't put it on this chart, bribing a witness is different from plain vanilla bribery. If you try to bribe somebody in a business deal, that is one kind; if you go out and bribe a witness, that is another. Bribing a witness is also a 12.

Now, I want to point that out right up front because the most important point that makes is that when you read the phrase in the Constitution that what is impeachable is treason, bribery, and other high crimes and misdemeanors, bribery is not considered by our court system. Pure bribery, plain old bribery, is not considered as serious in sentencing as perjury, witness tampering, obstruction of justice, and of course bribing a witness. They are all of the same cloth. Why? Because that interferes with the administration of justice. Because we can't have justice if people block the courts from getting at the truth. And if you go about doing it intentionally, you have committed these crimes.

It should be pointed out that lies under oath in a court proceeding, whether or not they rise to the level of crimes of perjury, can be obstruction of justice. So when the President lied in the Jones deposition, this was part of the obstruction of justice charged under article II that is before you today, even though there is no separate count. And he lied a lot in that deposition. We will talk about that a little later. The fact that the House did not send you the article of impeachment for perjury in the Jones deposition does not keep you from considering the lies in that deposition as an obstruction of justice crime under article II that is before you. And you know that it is also incorporated in article I, because it is one of the four items specifically listed as the perjury that he lied about lying in the deposition.

Now, having said that, think about all of this as one big obstruction, because perjury can be obstruction. Just plain lying can be obstruction. Witness tampering, by the way, is a separate crime be-

cause it is titled that way, but it is one of two separate obstruction of justice sections in the United States Criminal Code. It is just another version of obstruction of justice. So don't be confused. Witness tampering is obstruction of justice—literally, figuratively, and in every other way. But people think about it separately because it has a separate element, a lesser element of proof actually than obstruction of justice. But it is all part of the same fabric, again.

To put the essence of all of this in a nutshell for you, think back on the evidence presented yesterday. I would suggest that President Clinton thought his scheme out well. He resented the Jones lawsuit. He was alarmed when Monica Lewinsky's name appeared on the witness list, and he was more alarmed when Judge Wright issued her orders signaling that the court would hear the evidence of other relationships. To keep his relationship with Monica Lewinsky from the court, once Judge Wright issued her ruling, he knew he would have to lie to the court. To succeed at this, he decided that he had to get Monica Lewinsky to file a false affidavit, to try to avoid having her testify. And he needed to get her a job to make her happy, to make sure she executed that false affidavit, and then stick with her lies when she was questioned about it.

Then the gifts were subpoenaed and he had to have her hide the gifts—the only tangible evidence of his relationship with her that would trigger questions. She came up with the idea of giving them to Betty Currie, and the President seized on it. Who would think Betty Currie should be called to produce the gifts? Nobody would. Then he would be free to lie in his deposition, and that is, of course, what he did. But after he did this, he realized that he had to make sure that Betty would lie and cover for him.

He got his aides convinced to repeat the lies to the grand jury and to the public, and all of this worked—until the dress showed up. Then he lied to the grand jury to try to cover up and explain away his prior crimes.

That is the case in a nutshell. That is why we are here today. That is what this evidence in the record shows, I believe, in an exceptionally compelling way.

Now, let's review what happened and, as we do, I ask you to think back to what Mr. BRYANT said to you yesterday. Always ask yourself, what are the results of the act and who benefited. I think you will find each time that it is the President who benefited. Now we are going to go over the facts.

On December 5, 1997, a year ago, about a week before Judge Wright issued her order making it clear that the President's relationship with Monica Lewinsky was relevant to the Jones case, Ms. Lewinsky's name appeared on the Jones witness list. The President learned this fact the next day, December 6. The President telephoned Monica Lewinsky at about 2 a.m. on December 17 and informed her about her name being on the witness list. That was about 10 days after he learned about it and about 5 days after Judge Wright's order. It was the order that made it clear that his relationship with Monica was discoverable by the Jones attorneys in that case.

Long before this, though, long before the President was called to give a deposition or Monica Lewinsky was named on the witness list in the Jones case, the evidence shows she and the President

had concocted cover stories. They had an understanding that she would lie about the relationship, and so would he, if anybody asked about it.

During a telephone conversation on the 17th of December, the President told Monica she might be called as a witness, and he at that time suggested that she might file an affidavit to avoid being called as a witness to testify in person in that case. In the same conversation, they reviewed these cover stories that they had concocted to conceal their relationship. He brought them up. They went over them again.

Why do you think they did that? In her grand jury testimony, Monica said the President didn't tell her to lie, but because of their previous understanding she assumed that they both expected that she would lie in that affidavit. In this context, the evidence is compelling that the President committed both the crimes of obstruction of justice and witness tampering right then and there on December 17.

Now, Monica Lewinsky's testimony is so clear about this that the President's lawyers probably won't spend a lot of time with you on this; they didn't in the Judiciary Committee. I could be wrong, and they probably will just to show me I am wrong.

I want us to look at this and specifically look at her testimony together because it is so compelling. On pages 123 and 124 of her testimony—you can find it in Part 1 of the Starr Report. I know you can't see all of this that well back there, but you should have the charts. I point out in red on this chart the most important part of it. This is where she described the December 17 telephone conversation. I am going to read you part of it.

She said here in red:

> At some point in the conversation, and I don't know if it was before or after the subject of the affidavit came up, he sort of said, "You know, you can always say you were coming to see Betty or that you were bringing me letters," which I understood was really a reminder of things that we had discussed before.
>
> Question: So when you say things you had discussed, sort of ruses that you developed?
>
> Answer: Right. I mean, this was—this was something that—that was instantly familiar to me.
>
> Question: Right.
>
> Answer: And I knew exactly what he meant.
>
> Question: Had you talked with him earlier about these false explanations about what you were doing visiting him on several occasions?
>
> Answer: Several occasions throughout the entire relationship. Yes. It was the pattern of the relationship, to sort of conceal it.

Now, let's look at another chart. Monica Lewinsky's August 6 grand jury testimony, on pages 233 and 234. Both are from the August 6 grand jury testimony, where in the context of the affidavit she makes the now famous statement, "No one asked or encouraged me to lie." She did say that, but let's look at how she said that:

> For me, the best way to explain how I feel what happened was, you know, no one asked or encouraged me to lie, but no one discouraged me either.

". . . but no one discouraged me either." I don't know how many times anybody said that to you when they made their arguments, but that is what she said and the context.

Later on, she says in her testimony on the same pages:

. . . it wasn't as if the President called me and said, "You know, Monica, you're on the witness list, this is going to be really hard for us, we're going to have to tell the truth and be humiliated in front of the entire world about what we've done," which I would have fought him on probably. That was different. And by him not calling me and saying that, you know, I knew what that meant. . . .

Question: Did you understand all along that he would deny the relationship, also?

Answer: Mm-hmm. Yes.

Question: And when you say you understood what it meant when he didn't say, "Oh, you know, you must tell the truth," what did you understand that to mean?

Answer: That—that—as we had on every other occasion and every other instance of this relationship, we would deny it.

After reading this, if you believe Monica Lewinsky, can there be any doubt that the President was suggesting that she file an affidavit that contains lies and falsehoods that might keep her from ever having to testify in the Jones case and give the President the kind of protection he needed when he testified?

And, of course, in that same December 17 conversation, the President encouraged Monica to use cover stories and tell the same lies as he expected her to do in the affidavit if and when she was called to testify live and in person. Both of those would be obstruction of justice and witness tampering. Taken together—encouraging her to file this false affidavit that she clearly describes here, and the encouraging of her to lie if she is ever called as a witness—both of these are counts 1 and 2 of the obstruction of justice charge.

If I don't leave you with any other impression walking away from here today, I want you to think about this. This is the clearest, boldest, most significant obstruction of justice charge. I don't see how anybody can walk away from it and explain it away. It is a pattern. It should not be looked at in isolation. Think about it. It is the kickoff to what really happened. It is why we got involved in this in the first place. The President had a scheme and he went through this process. And it all ties together with the rest of it.

Two days later, Monica Lewinsky was subpoenaed and contacted Vernon Jordan who put her in touch with Attorney Frank Carter. That is the attorney he picked out. As we all know, this very false affidavit that Frank Carter prepared—and, of course, knowing it was false when he prepared it, but Monica knew it and the President knew it—was filed just before the President's deposition in the Jones case January 17. The record shows that the President was kept abreast of the participation by Vernon Jordan and all of its contents, and Jordan advised the President when Monica signed the affidavit on January 7. He advised the President of that fact. Two days before Monica says in a conversation she asked the President if he wanted to see the draft affidavit, he replied—you recall from yesterday—he replied that he didn't need to see it because he had already seen "15 others."

I doubt seriously he was talking about 15 other affidavits of somebody else and didn't like looking at affidavits anymore. I suspect and I would suggest to you that he was talking about 15 other drafts of this proposed affidavit since it had been around the horn a lot of rounds.

The circumstantial evidence makes it clear the President knew the context of the Lewinsky affidavit and he knew it was false.

During the President's deposition in the Jones case on January 17, his attorney, Robert Bennett, at one point tried to stop the

Jones lawyers from asking the President about his relationship with Monica Lewinsky by pointing out the affidavit she had signed.

I think we all remember that because there was a lot of that on TV up here yesterday. Mr. Bennett asserted at the time that the affidavit indicated "there is no sex of any kind, manner, shape or form." That is what he said. After a warning from Judge Wright, Mr. Bennett stated, "I'm not coaching the witness. In preparation of the witness for this deposition, the witness is fully aware of Ms. Lewinsky's affidavit, so I have not told him a single thing he doesn't know." The President did not say anything to correct Mr. Bennett, even though he knew the affidavit was false. The judge allowed the questioning to proceed and later Mr. Bennett read to the President a portion of paragraph 8 of Monica Lewinsky's affidavit in which she denied having a "sexual relationship" with the President and asked him if Ms. Lewinsky's statement was true and accurate, to which the President responded, "That is absolutely true."

I am not going back over and putting that on the screen again. But I do want to put up here before you what you have in front of you, paragraph 8 of Monica Lewinsky's affidavit.

Paragraph 8 of her affidavit was absolutely false, and the President knew it.

I want to go over that a little bit. What it says up here at the beginning of it is, "I have never had a sexual relationship with the President. He did not propose that we have a sexual relationship," and so on. And we have a lot about that. But look at what it says down at the end of this. What is down at the end of this—you have it in front of you. It says down here, "The occasions that I saw the President after I left my employment at the White House in April 1996 were official receptions, formal functions, or events related to the United States Department of Defense, where I was working at the time. There were other people present on those occasions."

I just want to point out to you that paragraph 8, which was the subject of a lot of discussions, which the President certainly was fully aware of—which you watched where he was intensely responding, with regard to Mr. Bennett yesterday in that deposition—didn't just contain a lie about a sexual relationship where you quibble over a word, it is a full-fledged lie and a cover story about this. None of that is true. Monica Lewinsky saw him a lot of other times, and the President certainly knew that. They weren't all official events or anything else. This is a complete falsehood, paragraph 8, and the President knew it.

At that point in time when he allowed his attorney on the day of the deposition to make a false and misleading statement to the judge—and the attorney didn't know that—but it was a false and misleading statement to the judge characterizing this affidavit, he knew better. And the President at that point in time committed the crime of obstruction of justice. And that is count 5 of article II.

Now, the President's lawyers are going to argue that he sat silent because he wasn't paying attention, and he didn't hear or appreciate what Mr. Bennett was saying. We have already seen the video. And you know that he was looking so intently. Remember he was intensely following the conversation with his eyes. I don't know if you watched it on TV yesterday and observed that. It was

played twice. I don't know how anybody can say this man wasn't paying attention. He certainly wasn't thinking about anything else. That was very obvious from looking at the video.

The President's other defense also falls apart on its face. During his grand jury testimony, the President argued that when Mr. Bennett characterized the Lewinsky affidavit as indicating "there is no sex of any kind, in any manner, shape or form" that it was a completely true statement because at that particular time, at that moment, when the statement was being made on January 17, 1998, there was no sex going on. That was when the President made his famous utterings to the jury, "It depends on what the meaning of the word 'is' is." That is when he said that. Of course the President knew perfectly well that the context of Mr. Bennett's discussions with the judge and characterization of the Lewinsky affidavit was referring to the denial in paragraph 8 of the affidavit that there had never been any sexual relationship at any time, not that there was no sex or sexual relationship going on on January 17, the day of the deposition.

I implore you not to get hung up on some of the details. It is absurd, some of the arguments that are being made and have been made by the President and his attorneys to try to explain this.

This is a perfect example of that. When we start looking around at this, you can't see the forest sometimes for the trees. The big picture is what you need to keep in mind, not the compartmentalized portion. There will be a lot of effort, I am sure, to try to go and pick at one thing or another. But this is an extraordinarily good example of how the argument failed when put in that situation. And we shouldn't play word games.

When Monica Lewinsky was subpoenaed to testify, she was also subpoenaed to produce any gifts that the President had given her. When she met with Vernon Jordan the day she received the subpoena, she told him of her concerns about the gifts and she asked him to tell the President about the subpoena.

Early in the morning on December 28, near the end of the year, they met, the President and Monica, in his office, and they exchanged gifts and discussed the gifts being subpoenaed. According to Ms. Lewinsky, she suggested that maybe she should put the gifts away outside of her house somewhere or give them to somebody like Betty Currie. She says he responded—the President responded—with an "I don't know," or "let me think about that." She was very clear that at no point did he ever give her the impression that she should turn the gifts over to the Jones attorneys.

That is consistent with their cover stories—the one later and later in the perjury where the count discusses his lying to the grand jury. Consistent with their cover stories and all the plans for denying the relationship, her testimony in this regard is very believable.

On the other hand, the President's testimony in front of the grand jury that encouraged her to turn all of the gifts over to the Jones attorneys is not believable. How can nobody believe that? When he said that to the grand jury, he committed perjury. When a few hours later, according to Monica Lewinsky, Betty Currie called her on the telephone and said, "I understand you have something to give me," or maybe she said, "the President said you have

something to give me," and Betty Currie came over and got the gifts and took them back and hid them under her bed, at that moment, the President's crime of obstruction of justice, as described in count 3 of article II, was complete.

Remember, by its nature, obstruction of justice charges in crimes are most frequently proven by circumstantial evidence. As somebody said here the other day, we don't tell people we are going to go out under the elm tree and lie and obstruct things. Usually it is a lot more circuitous than that. In the context of all that was going on at the time and the general truthfulness of Monica Lewinsky's testimony, and other respects, how can anyone come to any other conclusion than that the President collaborated with Monica and Betty to hide these gifts on December 28? How can they? The sequence is there.

The President's lawyers may spend a lot of time attacking this particular obstruction of justice charge. They may question why the President would have given Monica Lewinsky more gifts on December 28 if he was expecting her to hide the gifts. Monica's explanation and her testimony is "from everything he said to me," he expected her to conceal the gifts, including the ones being given that day. When Ms. Currie's call came, wasn't it the logical thing for Monica to conclude that this was the result of the President having thought about what to do with the gifts, which he said he was going to do, according to her, and deciding to have Ms. Currie hide them?

That is the logical thing.

The President's attorneys will no doubt also question the veracity of Ms. Lewinsky with regard to who made the phone call, since Ms. Currie's recollection isn't very good. And at first she says she recalls Monica made it. Of course, the phone records indicate that Ms. Currie called Ms. Lewinsky. That is the much more logical sequence.

Also it doesn't make sense that the President's secretary, who is so close to him—think about it—that she would have taken the gifts and would have hidden them under her bed and never talked with the President about doing so before or after she did so. That doesn't make sense.

It is also noteworthy that the President did everything he could in his January 17 deposition to conceal the true nature of his relationship with Monica Lewinsky. This is consistent with the arguments that he never intended the gifts be kept from the Jones attorneys. He never intended them to be given to the Jones attorneys. If he had intended to give these gifts to the Jones attorneys, or have them given, why would he have gone through this elaborate series of lies in that deposition? Common sense tells us if he knew these gifts were revealed, questions would be raised and his relationship revealed.

So all the logic is there. I don't know how you refute it.

Another obstruction count the President's attorneys are likely to spend time on is one concerning the job search. There is no question that Monica Lewinsky was looking for a job in New York a long time before we get to December of 1997 and when the affidavit and all of this took place, long before the President had reason to be concerned that she would have to testify or he would have to

testify in the case. There is no question about that. That is not the issue. The question is whether or not the President intensified his efforts to get her a job and make sure she got one after it became clear to him that he would need her to lie, sign a false affidavit, and stick with her lies in any questioning. That is what counts. That is what is important. Did he intensify his efforts and really go after it? Was it part of that pattern I described to you earlier which Mr. HUTCHINSON described yesterday? That is what is important.

In other words, as count 34 of article II alleges, did she make sure she was rewarded with sticking with him in a scheme of concealment in anticipation that this reward would keep her happy and keep her from turning on him? Did the President make sure Monica Lewinsky signed a false affidavit by getting her a job?

The record shows that while she did give some interviews from earlier contacts, including one involving the job with the U.S. Ambassador to the United Nations, no one of real influence around the President put on a full court press to get her a job and she had not had any success as of December 6.

She had not been able to get in touch with Vernon Jordan in her recent efforts. He had met with her once in November, but as you recall from yesterday's discussions, something he didn't even have a good memory of. He certainly wasn't very focused on it, and she wasn't getting where she wanted to get.

And so on December 6 she mentioned that fact to the President. Remember, that is one day after she was named on a witness list. In fact, that is the day that he learned or may have learned—we know he learned of her being on that witness list. The President met with Vernon Jordan the next day, but he apparently didn't mention Ms. Lewinsky, according to Jordan's testimony. The record shows that not only on December 11 did Mr. Jordan act to help Ms. Lewinsky find a job when he met with her and gave her a list of contact names on December 11, Mr. Jordan that same day made calls to contacts at MacAndrews & Forbes, the parent corporation of Revlon, and two other New York companies. He also telephoned the President to keep him informed of his efforts.

Keep in mind that on this day, this very same day, December 11, Judge Wright issued her order in the Jones case entitling Jones' lawyers to discover the President's sexual relations. Is that a mere coincidence?

Later in December, Monica Lewinsky interviewed with New York-based companies that had been contacted by Mr. Jordan. She discussed her move to New York with the President during that meeting on December 28. On January 5, she declined a United Nations offer. On January 7, Ms. Lewinsky signed the false affidavit. The next day, on January 8, she interviewed in New York with MacAndrews & Forbes, but the interview went very poorly. Learning of this, Vernon Jordan, that very day, called Ronald Perelman, the chairman of the board of MacAndrews & Forbes. She was interviewed the next morning again, and a few hours later she received an informal offer. She told Jordan about it. He immediately told Betty Currie about it, and he personally told the President about it later.

On January 13, her job offer at Revlon was formalized, and within a day or so President Clinton told Erskine Bowles that Ms. Lewinsky had found a job in the private sector. It was a big relief to him.

Then her false affidavit was filed, and on January 17 the President gave a deposition relying on the false affidavit and using their cover stories to conceal their relationship.

Was this full court press in December and early January to assure Monica Lewinsky had a job just a coincidence? Logical common sense says no; the President needed her to continue to cooperate in his scheme to hide their relationship, keeping her happy so he could control her and he would be assured that she had filed this false affidavit and testifying untruthfully if she was called. It is the only plausible rationale for this stepped-up job assistance effort at this particular time. In doing so, the President committed the crimes of obstruction of justice and witness tampering as set forth in count 4 of article II.

Well, we have gone through quite a few of these, and I am trying to be brief with you, but I think each one of them is important. Each one of them entangles the President further in a web that fits together, and it is kind of sticky just like the one the spider weaves.

During his deposition in the Jones case, the President referred to Betty Currie several times and suggested that she might have answers to some of the questions. He used the cover stories, the same ones he and Monica talked about, and he talked about Betty Currie a good deal because she was a part of those cover stories. When he finished the deposition, he telephoned Ms. Currie, and he asked her to come to his office the next day and talk with him. Betty Currie told the grand jury when she came in the next day the President raised his deposition with her and said there were several things he wanted to know, then rattled off what you heard yesterday in succession: You were always there when she was there, right? We never were really alone. You can see and hear everything. Monica came on to me, and I never touched her, right? She wanted to have sex with me, and I can't do that.

All of those weren't true. They were all falsehoods. They were all declaratory statements. They weren't questions. It is clear from the record that Ms. Currie always tried her best to be loyal to the President, her boss. That is normal. That is natural.

In answering the questions in her testimony, she tried to portray the events and the President's assertions in the light most favorable to him, even though she acknowledges that she could not hear and see everything that went on between Monica and the President and that she wasn't actually present in the same room with them on any number of occasions, so they were alone. And she could not say what they might have been doing or saying.

On January 20 or 21, the President again met with Ms. Currie and, according to her, recapitulated what he said on Sunday, a day or two before, right after the deposition. In the context of everything, it seems abundantly clear that the President was trying to make sure that Betty Currie corroborated his lies and cover stories from the deposition if she was ever called to testify in the Jones case or grand jury or any other court proceeding. That is what he

was doing. In doing so, the President committed the crimes of witness tampering and obstruction of justice.

Later, the President testified, rather disingenuously, in my judgment, that he was simply trying to refresh his memory when he was talking to Ms. Currie. Ms. Currie's confirmation of false statements that the President made in his deposition could not in any way remind him of the facts. They were patently untrue. The idea that he was trying to refresh his recollection is implausible.

Recognizing the weakness of their client's case on this, the President's attorneys have suggested that he was worried about what Ms. Currie might say if the press really got after her. That is what we heard, at least over in the Judiciary Committee. Of course, it is possible the President was worried about the press. I would suspect so. But common sense says he was much more worried about what Betty Currie might say to a court, after he had just named her several times and talked about her, if she were called as a witness.

As those who follow me will tell you, the arguments by the President's lawyers that Betty Currie wasn't on the Jones witness list at the time and the window of opportunity to call her as a witness in that case closed shortly thereafter is irrelevant. They are going to argue—they argued to us that Betty Currie's name wasn't on the witness list. That is a big deal, they say. They say. But it is irrelevant. It doesn't matter. Witness tampering law doesn't even require that a pending judicial proceeding be going on for it to be a crime. So whether her name was on the witness list or not makes no difference.

There are two types of obstruction of justice. One does require a pending proceeding. I submit—and you will hear more about this later in the law—that in this instance the President committed both of them. He certainly should have anticipated that she would be called in the pending proceeding that was going on in the Jones case, but even if there was no pending proceeding—and you will, again, hear more about this later—for the witness tampering part of the obstruction of justice, it doesn't require there to have been an ongoing judicial proceeding.

Within 4 or 5 days of his Jones deposition, the President not only explicitly denied the true nature of his relationship with Monica Lewinsky to key White House aides, he also embellished the story when he talked with Sidney Blumenthal. To Sidney Blumenthal, he portrayed Monica Lewinsky as the aggressor, attacked her reputation by portraying her as a stalker and presented himself as the innocent victim being attacked by the forces of evil. Certainly he wanted his denial and his assertions to be spread to the public by these aides, but at the same time he knew that the Office of Independent Counsel had recently been appointed to investigate the Monica Lewinsky matter. He knew that at the time.

In the context of everything else that he was doing to hide his relationship, it seems readily apparent that his false and misleading statements to his staff members, whom he knew were potential witnesses before any grand jury proceeding, were designed in part to corruptly influence their testimony as witnesses. In fact, the President actually acknowledged this in his grand jury testimony, that he knew his aides might be called before the grand

jury. And one of the aides testified he expected to be called. Sure enough, they were, and they repeated the false and misleading information he had given them. In this, the President committed the crimes of witness tampering and obstruction of justice as set forth in count 7 of article II.

Now, that is the obstruction of justice. Let's briefly review the grand jury perjury for a minute.

If you believe Monica Lewinsky, the President lied to the grand jury and committed perjury. If you believe her—and I think this one is very important, not that they all aren't. There was the web of the obstruction that I just described and then there is the grand jury perjury on top of it. I told you earlier, perjury and just plain lying can all be obstruction of justice as well. But the grand jury part is much later. It is after the President had time to really reflect on all of this, a long time later.

If you believe Monica Lewinsky, the President lied to the grand jury and committed perjury in denying he had sexual relations with Monica Lewinsky even if you accept his interpretation of the Jones court's definition of sexual relations. That is really important. There isn't anything clearer in the whole darned matter than that. Just look at the President's grand jury testimony. And I am not going to go over all of that, but it is on pages 93 and 96 of his grand jury testimony. It is laid out in this chart which you have in front of you, and I encourage you to read every page of it carefully. Specifically, I call your attention to the fact—again, I am not going to read all of this—but they asked him about touching certain parts of the body that are defined in the definition that you have had repeated many times, publicly and otherwise. And two of those body parts he acknowledges, the breast and genitalia, were in fact part of the definition. And at the end of this—and I think this is very important; and I am going to read it because it is part of his testimony—he answers the question that is the compelling bottom line crime. This is where he perjured himself above all else:

> You are free to infer that my testimony is that I did not have sexual relations, as I understood this term to be defined.
>
> Q. Including touching her breasts, kissing her breasts, or touching her genitalia?
>
> A. That's correct.

In her sworn testimony, Monica Lewinsky described nine incidents of which the President touched and kissed her breasts and four incidents involving contact with her genitalia. On these matters, Lewinsky's testimony is corroborated by the sworn testimony of at least six friends and counselors to whom she related these incidents contemporaneously.

Again, if you believe the testimony of Monica Lewinsky, and it certainly is credible here—I think it is credible throughout but it is certainly credible, with all the corroboration you have in the record—there is nothing clearer in all of this, in all of this you have before you, than that the President committed the crime of perjury in testifying before the grand jury regarding the nature and details of his relationship with Monica Lewinsky.

On the other hand, there is plenty here to indicate the President cleverly created his own narrow definition of sexual relations to include only sexual intercourse, absent the explicit definition of the court, after he had already lied in responding to the interrogatories

and other pleadings and perhaps even in the depositions themselves in the Jones case. In other words, you are free to deduce that he knew full well what most people would include as sexual relations, oral sex, and the other intimate activities that he was engaged in with Ms. Lewinsky, before he contrived his own definition. In that case, you don't even have to rely on Monica Lewinsky's testimony to conclude that he committed the crime of perjury in testifying before the grand jury on the nature of his relationship with her.

There are other perjurious lies the President's grand jury testimony contains regarding the nature and details of his relationship with her. I am not going to outline all of those. I want to call your attention to one. The President's prepared statement, given under oath, said, "I regret that what began as a friendship came to include this conduct." You may remember that from Mr. ROGAN, I think, yesterday. "I regret that what began as a friendship came to include this conduct." That is what he said in the grand jury. The evidence indicates that he lied. As Ms. Lewinsky testified, her relationship with the President began with flirting, including Ms. Lewinsky showing the President her underwear, and just a couple of hours later they were kissing and engaging in intimacies. That is a little bit more than friendship. He lied when he said that to the grand jury.

Before the grand jury, the President swore that he testified truthfully at his deposition. Remember, I told you I was going to come back to this. It is important because the Paula Jones deposition testimony is relevant to obstruction of justice but it is also relevant to the perjury here, because one of the portions of the perjury article that we have before us includes this issue of lying in the deposition. The perjury in this case is not the lying in the deposition, it is the lying to the grand jury about whether he lied in the deposition. He didn't have to have committed perjury. We didn't send you the perjury count over from the deposition. But if he lied—lying can be less than perjury. If he lied in the deposition, and then he told the grand jury that he didn't lie, he committed perjury in front of the grand jury.

The evidence indicates that he did lie. He testified before the grand jury that "my goal in this deposition was to be truthful, but not particularly helpful . . . I was determined to walk through the minefield of this deposition without violating the law and I believe I did."

Contrary to this testimony, the President was alone with Ms. Lewinsky when she was not delivering papers, which he even conceded in his grand jury statement. So he lied in the deposition then when he said he wasn't alone with her.

In the deposition, the President swore he could never recall being in the Oval Office hallway with Ms. Lewinsky except when she was perhaps delivering pizza. The evidence indicates that he lied.

The President swore, in the Jones deposition, that he could not recall gifts exchanged between Monica Lewinsky and himself. The evidence indicates that he lied.

He swore, in the deposition, that he did not know whether Monica Lewinsky had been served a subpoena to testify in the

Jones case at the last time that he saw her in December 1997. The evidence indicates that he lied.

In his deposition, the President swore that the last time he spoke to Monica Lewinsky was when she stopped by before Christmas 1997 to see Betty Currie at a Christmas party. The evidence indicates that he lied.

In his deposition in the Jones case, the President swore that he didn't know that his personal friend, Vernon Jordan, had met with Monica Lewinsky and talked about the case. The evidence indicates that he lied.

The President, in his Paula Jones deposition, indicated that he was "not sure" whether he had ever talked to Monica Lewinsky about the possibility that she might be asked to testify in the Jones case. Can anybody doubt the evidence indicates that he lied?

The President, in his deposition, swore that the contents of the affidavit executed by Monica Lewinsky in the Jones case, in which she denied they had a sexual relationship, were "absolutely true." The evidence indicates that he lied.

In other words, when the President swore in the grand jury testimony that his goal in the Jones deposition was to be truthful but not particularly helpful, the evidence is clear that he lied and committed the crime of perjury, inasmuch as he had quite intentionally lied on numerous occasions in his deposition testimony in the Jones case. His intention, in that deposition, was to be untruthful. That is what it was all about, to be untruthful. So he committed the crime of perjury in front of the grand jury—big time.

The third part of article I concerning grand jury perjury relates to his not telling the truth about false and misleading statements his attorney, Robert Bennett—unintentionally, Mr. Bennett, by the way, but nonetheless false and misleading statements—Robert Bennett made to Judge Wright during the President's Jones case deposition. We have been on that a lot. I don't want to bore you with going over all those details again, but this is the third part of the perjury count as well as an obstruction of justice count.

During the President's deposition in the Jones case, Mr. Bennett, however unintentional on his part, misled the court when he said, "Counsel [counsel for Ms. Jones] is fully aware that Ms. Lewinsky has filed, has an affidavit which they are in possession of saying that there is no sex of any kind, of any manner shape or form, with President Clinton . . ." Judge Wright, as you recall again, interrupted Mr. Bennett and expressed her concern that he might be coaching the President, to which Mr. Bennett responded, "in preparation of the witness for this deposition, the witness is fully aware of Ms. Lewinsky's affidavit, so I have not told him a single thing he doesn't know . . ."

In his grand jury testimony about these statements by Mr. Bennett to the judge in the Jones case, the President testified:

> I'm not even sure I paid attention to what he was saying. . . . I didn't pay much attention to this conversation which is why, when you started asking me about this, I asked to see the deposition . . . I don't believe I ever even focused on what Mr. Bennett said in the exact words he did until I started reading this transcript carefully for this hearing. That moment, the whole argument just passed me by.

In so testifying before the grand jury, the President lied and committed the crime of perjury. As you saw yesterday in the video,

during this portion of that deposition when Mr. Bennett was discussing this matter with Judge Wright, the President directly looked at Mr. Bennett, paying close attention to his argument to Judge Wright. He lied about that to the grand jury. He committed perjury when he said that he wasn't paying attention and he didn't know what Mr. Bennett was saying.

Several of the most blatant examples of grand jury perjury are found in that portion of his testimony cited in the fourth part, the last part of article I which goes to his efforts, the President's efforts, to influence the testimony of witnesses and to impede the discovery of evidence in the Jones case. The President swore during the grand jury testimony that he told Ms. Lewinsky that if the Jones lawyers requested the gifts exchanged between them, she should provide them. If you believe Monica Lewinsky's testimony, the President lied and committed perjury.

In her grand jury testimony, Ms. Lewinsky discussed in detail the December 28 meeting where gifts were discussed which preceded by a couple of hours Ms. Currie coming to her apartment and taking the gifts and hiding them under a bed. As you recall, she said she raised with the President the idea of removing her gifts from her house and giving them to somebody like Betty Currie and that his response was something to the effect of, "Let me think about that."

She went on to say that from everything he said to her, they were not going to do anything but keep these gifts private. In a separate sworn statement, she testified she was never under the impression from anything the President said that she should turn over the gifts to the Jones attorneys, and obviously she didn't have the idea that she should do that because she gave them all to Betty Currie to hide under the bed.

When the President told the grand jurors that he was simply trying to "refresh" his recollection when he made a series of statements to Betty Currie the day after his deposition, he lied and committed perjury. As I have already pointed out to you today, the evidence is compelling that those statements, such as "I was never really alone with Monica, right?" were made to try to influence Betty Currie's possible testimony, so that she would corroborate his cover stories and other false statements and lies that he had given the previous day in the Jones deposition, if she was called as a witness.

If you conclude that these series of statements constitute witness tampering and obstruction of justice, then you must also conclude that the President committed perjury when he asserted that the sole purpose of these statements to Betty Currie was to "refresh" his recollection. You have to. Even if you were to buy the President's counsel's suggestion these statements might have been made to influence her in order for her to corroborate him, not in actual testimony in a court case but with the press, which they have said again to us—I don't know if they will say it to you—you would still conclude he was lying when he said that this was simply only to refresh his own recollection.

In the context of all of this, the idea that he was refreshing his recollection by firing off these declarative statements doesn't make sense. It just doesn't make sense. If you read the statements and

think about them on their face, they are inherently inconsistent with refreshing his recollection.

Also, the President told the grand jury that the things he told his top aides about his relationship with Monica Lewinsky may have been misleading but they were true. If you believe the aides testified truthfully to the grand jury about what the President told them about his relationship, the President told them many falsehoods, absolute falsehoods. So when the President described them under oath to the grand jury as truths, he lied and committed the crime of perjury.

One example of this comes from Deputy Chief John Podesta in his testimony before the grand jury on January 23 that the President explicitly told him that he and Monica Lewinsky had not had oral sex. Another is Sidney Blumenthal. His testimony was that on January 23 the President told him that Monica Lewinsky "came at me and made a sexual demand on me" and that he rebuffed her. And also Blumenthal's testimony that the President told him that Lewinsky threatened him and said that she would tell people that they had had an affair and that she was known as a stalker among her peers.

In short, the President lied numerous times before the grand jury, my colleagues. He lied numerous times under oath last August 17. He committed perjury numerous times under oath. He certainly wasn't caught by surprise by any of this, by any of the questions that were asked him during the grand jury appearance, and he was given a lot of latitude. He was given latitude normally that grand jury witnesses don't have—to give a prepared statement, to have his counsel present, to refuse to answer questions without taking the fifth amendment.

It is hard to imagine a case where it is clear that the lies meet the threshold of the crime of perjury. But I will leave the discussion of the elements and the law to the next group that is going to come up here.

The facts are clear that the President lied about having sexual relations with Monica Lewinsky even under his understanding of the definition of the Jones case if you believe Monica.

He lied when he said he gave truthful testimony in his Jones deposition.

He lied when he said he wasn't paying attention to his attorney's discussion of Monica Lewinsky's false affidavit during his deposition in the Jones case.

He lied when he said he told Monica Lewinsky she should turn over the gifts to the Jones lawyers if they asked for them.

He lied when he told the grand jury that he made the declaratory statements to Betty Currie to refresh his recollection.

And he lied when he told the grand jury that he only told the truth to his White House aides, such as John Podesta who testified the President told him he had not had oral sex with Lewinsky, and to Sidney Blumenthal who testified he told him very exaggerated and highly untrue characterizations of Monica Lewinsky's role in all of this.

These impeachment proceedings aren't before you because of one or two lies about a sexual relationship. This is not about sex. This is about obstruction of justice. This is about a pattern. This is

about a scheme. This is about a lot of lies. This is about a lot of perjury. They are before you because the President lied again and again in a perjurious fashion to a grand jury and tried to get a number of people, other people, to lie under oath in the Jones lawsuit and to the grand jury and encouraged the concealment of evidence.

In a couple of days the President's lawyers are going to have their chance to talk to you, and I suspect they will try to get you to focus on 10, 15, or 20, or 30, maybe even 100 specific little details. They are going to argue that these details don't square with some of the facts about this presentation. But I would encourage you never to lose sight of the totality of this scheme to lie and obstruct justice; never lose sight of the big picture. Don't lose sight of the forest for the trees. It is easy to do because there are a lot of facts in this case.

I suggest you avoid considering any of this stuff in isolation and treating it separately. The evidence and the testimony needs to be viewed as a whole. The weight, we call it in law—and you are going to hear that in a few minutes—the weight of the evidence in this case is very great, it is huge in its volume, that the President engaged in a scheme, starting in December 1997, to conceal from the court in the Jones case his true relationship with Monica Lewinsky and then cover up his acts of concealment which he had to know by that time were serious crimes.

The case against the President rests to a great extent on whether or not you believe Monica Lewinsky. But it is also based on the sworn testimony of Vernon Jordan, Betty Currie, Sidney Blumenthal, John Podesta, and corroborating witnesses. Time and again, the President says one thing and they say something entirely different. Time and again, somebody is not telling the truth. And time and again, an analysis of the context, the motivation, and all of the testimony taken together with common sense says it is the President who is not telling the truth. But if you have serious doubts about the truthfulness of any of these witnesses, I, again, as all my colleagues do, encourage you to bring them in here. Let's examine Monica Lewinsky, Vernon Jordan, Betty Currie and the other key witnesses, let you examine the testimony, invite the President to come, and judge for yourself their credibility.

But on the record, the weight of the evidence, taken from what we have given you today, what you can read in all of these books back here, everything taken together is huge that the President lied. It is refutable, but it is not refutable if somebody doesn't come in here besides just making an argument.

I don't know what the witnesses will say, but I assume if they are consistent, they'll say the same that's in here. But you have a chance to determine whether they are telling the truth. The only way you will ever know that, other than just accepting it if you think the evidence and the weight is that huge—and it may be—is by looking them in the eye and determining their credibility.

I believe that when you finish hearing and weighing all of the evidence, you will conclude, as I have, that William Jefferson Clinton committed the crimes of obstruction of justice, witness tampering, and perjury, that these in this case are high crimes and misdemeanors, that he has done grave damage to our system of

justice, and leaving him in office would do more, and that he should be removed from office as President of the United States.

Thank you, Mr. Chief Justice.

The CHIEF JUSTICE. The Chair recognizes the majority leader.

RECESS

Mr. LOTT. Mr. Chief Justice, I ask unanimous consent that there now be a recess in the proceedings for 15 minutes. Please return to your positions within 15 minutes.

There being no objection, at 2:11 p.m., the Senate recessed until 2:30 p.m.; whereupon, the Senate reassembled when called to order by the Chief Justice.

The CHIEF JUSTICE. The Chair recognizes the majority leader.

Mr. LOTT. Mr. Chief Justice, as all Senators return to the Chamber, I believe now we are going to go to a segment where we will hear from three of the managers, including Congressmen GEKAS, CHABOT, and CANNON, and then we will take another break shortly after 3:30.

The CHIEF JUSTICE. The Chair recognizes Mr. Manager GEKAS.

Mr. Manager GEKAS. Mr. Chief Justice, counsel for the President, my colleagues from the House, and Members of the Senate, up to now you have been fully informed of the state of the record in this case in many different ways, in very many different tonalities uttered by the managers, who so magnificently, in my judgment, have woven the story that began in 1997 and has not ended yet.

But the narrative that the managers were able to produce for you and put on the record has met, even as we speak, with commentary in the public that "we have all known all of this before." The big difference is that now it is part of the history of the country. It is lodged in the records of the Senate of the United States. And together with the CONGRESSIONAL RECORD of the proceedings that preceded these in the House, we now have the dawning of the final chapters of this particular incident involving the President, in which you will have the final word. But that is what the importance is of what you have heard up until now—the complete record woven together, step by step, so that no one in this Chamber at this juncture does not know all the facts that are pertinent to this case. That is a magnificent accomplishment on the part of the managers.

But the record is not yet complete, and that is where I and Representative CHABOT, Representative CANNON, and Representative BARR come in, so that now we can take the next step in fulfillment of the record, and that is, to try to apply the statutory laws, the laws of our Nation as they pertain to the facts that you now have well ingrained into your consciences. To do that, we have to repeat some of the facts. Some of these matters overlap, and just as you have given your attention to the matters at hand up until now, your undivided attention is needed continuously.

For instance, we cannot discuss even the application of these statutes to the facts unless we repeat the series of events that catapulted us to this moment in history. And we must begin, as you have heard countless times now on and off this floor, in my judg-

ment, with the Supreme Court of the United States, with all due deference to the Chief Justice, because the Supreme Court at one point in this saga determined in a suit brought by Paula Jones that indeed an average, day-to-day, ordinary citizen of our Nation would have the right to have a day in court, as it were, even against the President of the United States. It is there that all of this began.

That fellow American, Paula Jones—no matter how she may have been described by commentators and pundits and talking heads, et cetera—did have a bundle of rights at her command. Those rights went into the core of our system of justice to bring the President into the case as a defendant. That is an awesome and grand result of the Supreme Court decision at that juncture. This is what is being overlooked, in my judgment, as we pursue what we believe. If perjury indeed was committed—and the record is replete that it in fact was—and if indeed obstruction of justice was finally committed by the President of the United States—as the evidence abundantly demonstrates—then we must apply the rights of Paula Jones to what has transpired.

We are not saying that the President—even though the weight of the evidence demonstrates it amply—should be convicted of the impeachment which has brought us to this floor just because he committed perjury or obstructed justice, but because as a result of his actions both in rendering falsehoods under oath, as the evidence demonstrates amply, or in obstructing justice, that because of his conduct, he attempted to, or succeeded in, or almost succeeded in—it doesn't matter which of these results finally emerges—and attempted to destroy the rights of a fellow American citizen. That is what the gravamen of all that has occurred up to now really is.

In attempting to obstruct justice, we mean by that obstructing the justice of whom? It was an attempt, a bold attempt, one that succeeded in some respects, to obstruct the justice sought by a fellow American citizen. That is heavy. That is soul searching in its quality. That goes beyond those who would say, "He committed perjury about sex. So what?" That goes beyond saying that, "This is just about sex. So what? Everybody lies about sex." But when you combine all the features of the actions of the President of the United States and you see that they are funneled and tunneled and aimed and targeted toward obliterating from the landscape the rights of Paula Jones, a fellow American citizen, then you must take a second look at your own assertion that, "So what? It's just a question of fact about sex."

Many of the Members of this Chamber and others have already acknowledged that the President has lied under oath. But then they are quick to add, "So what?" which is so disturbing in view of the results of what has happened in this case.

Before the House of Representatives, as part of our record, we had a group of academicians, professors, testifying. Professor Higgenbotham—who, sadly I must relate, has passed away since his appearance—was trying to show how futile it was for us to even attempt to append perjury to an indictable, prosecutable offense, and that nowhere in the country is it prosecuted regularly, and that it is so trivial because it is based on sex. He went on to give an example of how trivial it is. I am paraphrasing it, but he said:

Would you expect to indict the President of the United States for perjury if he lied about a 55-mile-an-hour speed limit, even though he was going 56? If he would say, "I was only going 51," would you indict him on that?

In the repartee that I had with him, at that juncture, I asked him, would he feel the same if, as a result of that perjurious testimony about only going 51 miles an hour, there was a victim in the case, that this might be a tort case, an "involuntarily" case, a negligence case in which someone died as a result of an automobile accident, and the issue at hand would be the speed limit, would he feel the same way if, as a result of the perjury committed as to the rate of speed, that someone's rights were erased in the case by virtue of that perjury, and the gentleman acknowledged that that made a difference.

That is what the difference is here. The perjury per se, that being a phrase that we lawyers can adopt, the perjury per se is almost a given pursuant to the commentaries that we have heard from the people in and out of that Chamber. But when you add to it the terrible consequences of seeing a fellow citizen pursuing justice thwarted, stopped in her tracks, as it were, by reason of the actions of the President, that is what the core issue here is.

To take it, then, from the status of what consequence it had to that fellow American citizen to the next step is, in my judgment, an issue to go to the determination of whether or not there was an impeachable offense. My colleagues will show you how the law of perjury and the law of obstruction of justice relates to this pattern of factual circumstance that we bring to you. But in the meantime we must recount, even at the risk of overlapping some of the testimony, that following the initial recognition by the President that there was going to be a witness list and that Monica Lewinsky would eventually appear, as she did, on that witness list, this occurred, which is little examined thus far in the world of the scandal in which we are all participants, and that is this: The first item of business on the part of the Jones lawyers in pursuing the rights of Paula Jones was to issue a set of interrogatories, a discovery procedure that is well recognized in our courts all over the land, and that a set of interrogatories arrived at the President's desk.

At this juncture—this is way before the President appeared at the deposition about which you know everything now. The facts have been related to you in a hundred different ways, and you know that pretty well. I know you do. But did you know, can you fasten your attention for a moment knowing that this happened at the deposition a month before, on December 23, 1997, when the President had in front of him interrogatories that asked, did he ever have sexual relations with anyone other than his spouse during the time that he was Governor of Arkansas or President of the United States? And there the President answered—or I think that the interrogatory stated: Name any persons with whom you have had sexual relations other than your wife. And the answer that the President rendered in those interrogatories under oath was none.

I say to the ladies and gentlemen of the Senate that this was the first falsehood stated under oath which became a chain reaction of falsehoods under oath, and even without the oath, all the way to

the nuclear explosion of falsehoods that were uttered in the grand jury in August of 1998.

This little innocuous piece of paper called interrogatories was placed before the President presumably with or without counsel. Let's even presume with counsel. And it was a straight question, not with any definitions, no confusing colloquy between a judge and a gaggle of lawyers, no interpretation being put on any particular word in the interrogatories, but whether or not sexual relations had been urged or participated in by the President of the United States, and the answer was none in naming those persons.

What does that mean to you? What does that not mean to you? That when confronted right at the outset with the phrase "sexual relations" that the President adopted and determined the common usage, well-understood definition of sexual relations that everybody in America recognizes as being the true meaning of sexual relations, meaning sex of any kind. Did not the President answer that under the common understanding that all of us entertain when we discuss, more so in the last year than ever before in our lives, the phrase "sexual relations"? To me that is a telling feature of this case because when you leap over that and get to the depositions and everything that the President might have said in those depositions, as his counsel have repeatedly asserted to us were true, that he did not lie, that he did not commit perjury, that he did not evade the truth, that some of it was puzzling to them even, but it did not amount to perjury, what can they say about the statement one month before on December 23 in interrogatories?

That is extremely important. That is my recollection. Yours is the one that will have to predominate, of course.

But the weight that I put on it, I urge you to at least evaluate as you begin to level your weight on the evidence that has been presented.

If that were not enough, on January 15, again before the deposition, another interrogatory—this one a request for documents—was submitted to the President, and again the question there was—you will see it in the record; it is in the record—the request of documents says to submit anything that pertained to Monica Lewinsky, the intern or employee, Monica Lewinsky, of whatever description—notes, gifts, whatever, and the President in that particular instance again said none. I am willing to give the President a reasonable doubt on that and even ask you, if you do not place as much weight on it as I do, to forget all about that. But the point is that these assertions under oath were made before the Jones deposition was ever even conceived, let alone undertaken on January 17.

So he cannot, the President cannot use the lawyer talk and judge banter and the descriptions and definitions of sexual relations to cloud the answers that he gave at that time, and all of this in the continuous effort to destroy the rights of Paula Jones, a fellow American citizen.

That brings up the question. If someone, a member of your family, or someone who is a witness to these proceedings has a serious case in which one's self, one's property, one's family has been severely damaged, would you suffer, without a whimper, perjurious testimony given against you? Would you, knowing down deep that

at the end of the day it had caused you to lose your chance at retribution and a chance to be compensated for damages, to restore your family life?

Isn't that what our system is all about? Isn't that what the adverse consequence is of the attempt to obliterate the Paula Jones civil suit?

That is what it is, not that he committed perjury. So what? It is what the end result of that perjury might be that you should weigh. Skip over the fact that he committed perjury. We all acknowledge that it is said. But now tell me what that does to Paula Jones, or potentially could do to Paula Jones, or to one of you, or to one of your spouses, or to one of the members of your community who wants to have justice done in the courts.

Obstruction of justice is obstruction of justice to an individual, to a family. You can take it from Paula Jones and telescope it upward to every community, in every courthouse, and every State and every community in our land, and there is a Paula Jones eager to assert certain rights and then confronted with someone who would tear them down by false testimony, by lies under oath.

That is what the gravamen of all this really is.

One more thing. The counsel for the President have repeatedly and very authoritatively, professionally asserted, as many of you have, that this is not an impeachable offense, for, after all, they say, an impeachable offense is one in which there is a direct attack on the system of government; not perjury, not obstruction of justice.

So what, on those, they imply. They say it does not—perjury, especially about sex—attack the system of government. I must tell you that as an 8- or 9- or 10-year-old, I would accompany my mother to naturalization school three or four nights a week where my mother was intent on learning the English language and learning about the history of the United States, as the teachers for naturalization were preparing these prospective citizens. And she was so proud that she learned that the first President of the United States was George Washington, and was prepared to answer that question if it was posed to her in naturalization court. And she was so proud when I was testing her, preparing her. Each time I would say, "Mom, what are the three branches of Government?" And she would say, "The 'Exec' and the 'legislate' and the 'judish,'" in her wonderful, lovable accent. She knew the system of government. And she did have to answer that in naturalization court. And she knew that one wall of the creed that protects our rights is the "judish." She knew that the courthouse and the rights of citizens which are advanced in that courthouse are the system of government. Can anyone say that purposely attempting to destroy someone's case in the courthouse is not an attack on the system of government of our country?

Mr. CHABOT will elucidate on perjury.

The CHIEF JUSTICE. The Chair recognizes Mr. Manager CHABOT.

Mr. Manager CHABOT. Mr. Chief Justice, Senators, distinguished counsel for the President, I am STEVE CHABOT. I represent the First District of Ohio. Prior to my election to Congress, I practiced law in Cincinnati for about 15 years. As I stand before you

today, I must admit that I feel a long way away from that small neighborhood law practice that I had. Though, while this arena may be somewhat foreign to me, the law remains the same. As one of the managers who represents the House, I am here to summarize the law of perjury. While today's discussion of the law may not be as captivating as yesterday's discussion of the facts, it is nevertheless essential that we thoroughly review the law as we move forward in this historic process. I will try to lay out the law of perjury as succinctly as I can without using an extraordinary amount of the Senate's time but beg you to indulge me.

In the United States Criminal Code, there are two perjury offenses. The offenses are found in sections 1621 and 1623 of title 18 of the United States Criminal Code. Section 1621 is the broad perjury statute which makes it a Federal offense to knowingly and willfully make a false statement about a material matter while under oath. Section 1623 is the more specific perjury statute which makes it a Federal offense to knowingly make a false statement about a material matter while under oath before a Federal court or before a Federal grand jury.

It is a well-settled rule that when two criminal statutes overlap, the Government may charge a defendant under either one. As you know, the President's false statements covered in the first impeachment article were made before a Federal grand jury. Therefore, section 1623 is the most relevant statute. However, section 1621 is applicable as well.

The elements of perjury. There are four general elements of perjury. They are: An oath, an intent, falsity, and materiality. I would like to walk you through each of those elements at this time.

First, the oath.

The oath need not be administered in a particular form, but it must be administered by a person or body legally authorized to do so. In this case, there has been no serious challenge made about the legitimacy of the oath administered to the President either in his civil deposition in the Jones v. Clinton case or before the Federal grand jury. Let's, once again, witness President Clinton swearing to tell the truth before a Federal grand jury.

[Text of videotape presentation:]

William Jefferson Clinton, Do you solemnly swear that the testimony you are about to give in this matter will be the truth, the whole truth, and nothing but the truth, so help you God?

The oath element has clearly been satisfied in this case.

The next element is intent. To this day, the President has refused to acknowledge what the vast majority of Americans know to be true—that he knowingly lied under oath. The President's continued inability to tell the truth, the whole truth and nothing but the truth has forced this body, this jury, to determine the President's true intent.

The intent element requires that the false testimony was knowingly stated and described. This requirement is generally satisfied by proof that the defendant knew his testimony was false at the time it was provided. As with almost all perjury cases, you will have to make a decision regarding the President's knowledge of his own false statements based on the surrounding facts and, yes, by circumstantial evidence. This does not in any way weaken the case

against the President. In the absence of an admission by the defendant, relying on circumstantial evidence is virtually the only way to prove the crime of perjury.

The Federal jury instructions which Federal courts use in perjury cases can provide helpful guidance in understanding what is meant by the requirement that the false statement must be made knowingly. Let me quote from the Federal jury instructions:

> When the word "knowingly" is used, it means that the defendant realized what he was doing and was aware of the nature of his conduct, and did not act through ignorance, mistake or accident.

So as you reflect on the President's carefully calculated statements, remember the Federal jury instructions and ask a few simple questions: Did the President realize what he was doing, what he was saying? Was he aware of the nature of his conduct or did the President simply act through ignorance, mistake or accident?

The answers to these questions are undeniably clear even to the President's own attorneys. In fact, Mr. Ruff and Mr. Craig testified before the Judiciary Committee that the President willfully misled the court. Let's listen to Mr. Ruff.

[Text of videotape presentation:]

> Mr. RUFF. I'm going to respond to your question. I have no doubt that he walked up to a line that he thought he understood reasonable people—and you maybe have reached this conclusion—could determine that he crossed over that line and that what for him was truthful but misleading or nonresponsive and misleading or evasive was in fact false.

In an extraordinary admission, the President's own attorney has acknowledged the care, the intention, the will of the President to say precisely what he said.

The President's actions speak volumes about his intent to make false statements under oath. For example, the President called his secretary, Betty Currie, within hours of concluding his civil deposition and asked her to come to the White House the following day. President Clinton then recited false characterizations to her about his relationship with Ms. Lewinsky. As you have already heard, Ms. Currie testified that the President made the following statements to her:

> You were always there when she was there, right? We were never really alone. You could see and hear everything. Monica came on to me, and I never touched her, right? She wanted to have sex with me, and I can't do that.

This is not the conduct of someone who believed he had testified truthfully. It is not the conduct of someone who acted through ignorance, mistake or accident. Rather, it is the conduct of someone who lied, knew he had lied, and needed others to modify their stories accordingly.

Finally, it is painstakingly clear during the President's grand jury testimony that he, again, knows exactly what he is doing. Let's again watch the following excerpt from that testimony.

[Text of videotape presentation:]

> . . . was an utterly false statement. Is that correct?
> A. It depends on what the meaning of the word "is" is.

In this instance, and in many others that have been presented to you over the last 2 days, the facts and the law speak plainly.

The President's actions and demeanor make the case that President Clinton knowingly and willfully lied under oath in a grand jury proceeding and in a civil deposition. The compelling evidence in this case satisfies the intent element required under both sections 1621 and 1623 of the Federal Criminal Code.

The next element, falsity. The next element of perjury is falsity. In order for perjury to occur in this case, the President must have made one or more false statements. Yesterday my colleagues went through the evidence on this matter in great detail and clearly demonstrated that the President did, in fact, make false statements while under oath. Because of the evidence that was presented to date, without question the President's falsity and his false statements have been shown, so I am going to move forward to the final element of perjury, which is materiality.

The test for whether a statement is material, as stated by the Supreme Court in Kungys v. United States, is simply whether it had a "natural tendency to influence" or was "capable of influencing" the official proceeding. The law also makes clear that the false statement does not have to actually impede the grand jury's investigation for the statement to be material.

The law regarding the materiality of false statements before a grand jury is very straightforward. Because a grand jury's authority to investigate is broad, the realm of declarations regarded as material is broad. The President's false statements to the grand jury were material because the grand jury was investigating whether the President had obstructed justice and committed perjury in a civil deposition.

Now let's look at potential legal smokescreens. The President's attorneys will try to distract you from the relevant law and facts in this case. To help you stay focused on the law, I would like to preview some of the arguments that may be made by the President's attorneys.

Legal smokescreen No. 1, the Bronston case. You will probably hear opposing counsel argue that the President did not technically commit perjury, and appeal to the case of Bronston v. United States. This is a legal smokescreen. In the Bronston case, the Supreme Court held that statements that are literally truthful and nonresponsive cannot by themselves form the basis for a perjury conviction. This is the cornerstone of the President's defense. However, the Court also held that the unresponsive statements must be technically true in order to prevent a perjury conviction; such statements must not be capable of being conclusively proven false.

As we have seen, none of the President's perjurious statements before the grand jury, covered in the first impeachment article, are technically true. So, when the President's counsel cites the Bronston case, remember the facts. Ask yourselves, are the President's answers literally true? And remember, to be literally true they must actually be true.

It is also important to note that, consistent with the Bronston case, the response, "I don't recall," is not technically true if the President actually could recall. The factual record in the case, consisting of multiple sworn statements contradicting the President's testimony and highly specific corroborating evidence, demonstrates that the President's statements were not literally true or legally ac-

curate. On the contrary, the record establishes that the President repeatedly lied, he repeatedly deceived, he repeatedly feigned forgetfulness.

There are other clear and important limitations on the Bronston case's scope. In United States v. DeZarn, handed down just 3 months ago by the Sixth Circuit Court of Appeals, the court made an important ruling that is directly on point in this case. The court of appeals stated:

> Because we believe that the crime of perjury depends not only upon the clarity of the questioning itself, but also upon the knowledge and reasonable understanding of the testifier [President Clinton] as to what is meant by the questioning, we hold that a defendant may be found guilty of perjury if a jury could find beyond a reasonable doubt from the evidence presented that the defendant knew what the question meant and gave knowingly untruthful and materially misleading answers in response.

The Bronston case has further limitations. For example, in United States v. Swindall, the court held that the jury can convict for perjury even if the questions or statements involved are capable of multiple interpretations where only one interpretation is reasonable under the circumstances surrounding their utterances.

In United States v. Doherty, the court held that the prosecution for perjury is not barred under Bronston, "whenever some ambiguity can be found by an implausibly strained reading of the question" posed. I would submit to this body that "implausibly strained reading of the question" posed is precisely what confronts us time and again in the case of the President before the grand jury.

Legal smokescreen No. 2, the two-witness rule. In the coming days you may hear opposing counsel argue that the President did not commit perjury by appealing to the so-called two-witness rule. Again, this is nothing but a legal smokescreen. This common law rule requires that there be either two witnesses to a perjurious statement or, in the alternative, that there be one witness and corroborating evidence of the perjury. Opposing counsel may suggest that, because there were not two witnesses present for some of the President's false statements, he did not technically commit perjury. Such an appeal to the two-witness rule is wrong for several reasons.

First, the two-witness rule is not applicable under section 1623, only under 1621. The language of 1623 expressly provides, "it shall not be necessary that such proof be made by any particular number of witnesses or by documentary or other type of evidence."

Congress passed section 1623 back in 1970 to eliminate the two-witness requirement and to facilitate the prosecution of perjury and enhance the reliability of testimony before Federal courts and Federal grand juries. The legislative history establishes this as the fundamental purpose of the statute.

Additionally, substantial evidence has been presented over the last 2 days to satisfy the requirements of the two-witness rule under section 1621. Remember, when the two-witness rule applies, it does not actually require two witnesses. Indeed, it requires either two witnesses or one witness and corroborating evidence. As you know, there is a witness to each and every one of the President's false statements and there is voluminous evidence which corroborates the falsehood of his statements.

Finally, case law tells us that the two-witness rule is not applicable under certain circumstances, when the defendant falsely claims an inability to recall a material matter.

Another possible legal smokescreen, the drafting of article I, article I being the first article of impeachment.

As you know, impeachment article I says:

> Contrary to that oath, William Jefferson Clinton willfully provided perjurious, false and misleading testimony to the grand jury . . .

You may hear opposing counsel argue that section 1621 is the only applicable statute because the article of impeachment accuses the President of willfully committing perjury. This is another legal smokescreen.

Following that reasoning, one could just as easily make the argument that 1623 was contemplated here because the term "false" does not appear in 1621 but does appear in 1623. However, that is not the point. The point is that the language of the impeachment article did not use these terms as terms of art as they are defined and used in various criminal statutes.

While the article of impeachment does not draw a distinction between the standards, evidence has been presented over the last 2 days that demonstrates that the President did knowingly and willfully lie under oath regarding material matters before a grand jury, and that satisfies both 1623 and 1621.

Again, in the context of perjury law, the distinction between a knowing falsehood and a willful falsehood is almost a distinction without a difference. In American Surety Company v. Sullivan, the Second Circuit stated that "the word 'willful,' even in a criminal statute, means no more than the person charged with the duty knows what he is doing."

So that, in essence, is the law of perjury.

Mr. Chief Justice, Members of the Senate, throughout this long and difficult process, apologists for the President have maintained that his actions might well have been reprehensible but are not necessarily worthy of impeachment and removal from office. I submit, however, that telling the truth under oath is critically important to our judicial system and that perjury, of which I believe a compelling case is being made, strikes a terrible blow against the machinery of justice in this country.

The President of the United States, the chief law enforcement officer of this land, lied under oath. He raised his right hand and he swore to tell the truth, the whole truth, and nothing but the truth, and then he lied, pure and simple.

Why is perjury such a serious offense? Under the American system of justice, our courts are charged with seeking the truth. Every day, American citizens raise their right hand in courtrooms across the country and take an oath to tell the truth. Breaking that oath cripples our justice system. By lying under oath, the President did not just commit perjury, an offense punishable under our criminal code, but he chipped away at the very cornerstone of our judicial system.

The first Chief Justice of the United States of the Supreme Court, John Jay, eloquently stated why perjury is so dangerous over 200 years ago. On June 25, 1792, in a charge to the grand jury

of the Circuit Court for the District of Vermont, the Chief Justice said:

> Independent of the abominable Insult which Perjury offers to the divine Being, there is no Crime more extensively pernicious to Society. It discolours and poisons Streams of Justice, and by substituting Falsehood for Truth, saps the Foundations of personal and public Rights—Controversies of various kinds exist at all Times, and in all Communities. To decide them, Courts of Justice are instituted—their Decisions must be regulated by Evidence, and the greater part of Evidence will always consist of the Testimony of witnesses. This Testimony is given under those solemn obligations which an appeal to the God of Truth impose; and if oaths should cease to be held sacred, our dearest and most valuable Rights would become insecure.

Why has the President been impeached by the U.S. House of Representatives? Why is he on trial here today in the U.S. Senate? Because he lied under oath. Because he committed perjury. Because if the oaths cease to be held sacred, our dearest and most valuable rights will become insecure.

During the course of this trial, Members of this distinguished body, the jurors in this case, will have to consider the law and the facts very carefully. It is a daunting task and an awesome responsibility, one that cannot be taken lightly. I humbly suggest to those sitting in judgment of the President that we must all weigh the impact of our actions, not only on our beloved Nation today, but on American history. It is my belief that if the actions of the President are ultimately disregarded or minimized, we will be sending a sorry message to the American people that the President of the United States is above the law. We will be sending a message to our children, to my children, that telling the truth doesn't really matter if you have a good lawyer or you are an exceptionally skilled liar. That would be tragic.

Mr. Chief Justice, Senators, let us instead send a message to the American people and to the boys and girls who will be studying American history in the years to come that no person is above the law and that this great Nation remains an entity governed by the rule of law. Let us do what is right. Let us do what is just. Thank you.

The CHIEF JUSTICE. The Chair recognizes Mr. Manager CANNON.

Mr. Manager CANNON. Mr. Chief Justice, Senators, distinguished counsel of the President, my name is CHRIS CANNON. I represent Utah's Third Congressional District.

John Locke once said, "Wherever law ends, tyranny begins." And speaking to our American experience, Teddy Roosevelt added, "No man is above the law and no man is below it; nor do we ask any man's permission when we require him to obey it. Obedience to the law is demanded as a right; not as a favor."

This case is about the violation of law. My task is to clarify what the law states pertaining to obstruction of justice and what legal precedent is applicable to the charges against William Jefferson Clinton.

While both the laws and the violations in this case are clear and direct, the presentation I am about to make will not be simple. I ask your indulgence and attention as I walk you through case history and statutory elements. I promise to be brief—probably less than a half-hour—and direct.

I will present the legal underpinnings of the law of obstruction of justice. You should have before you the full text of this speech, including full citations to cases and copies of the charts I will use in this presentation.

Article II of the articles of impeachment alleges that the President prevented, obstructed, and impeded the administration of justice, both personally and through his subordinates and agents, and that he did so as part of a pattern designed to delay, impede, cover up, and conceal the existence of evidence and testimony related to a Federal civil rights action brought against him.

Article II specifies seven separate instances in which the President acted to obstruct justice. The House believes the evidence in this case proves that each of the seven separate acts which comprise the President's scheme constitutes obstruction of justice.

I would like to draw your attention at this time to the chart on my right, and the first page in your packet, which depicts elements of section 1503:

(a) Whoever . . . corruptly . . . influences, obstructs or impedes; or endeavors to influence, obstruct or impede, the due administration of justice, shall be punished as provided in subsection (b).

(b) The punishment for an offense under this section is . . .

(3) . . . imprisonment for not more than 10 years, a fine under this title, or both.

Section 1503 is often referred to as the general obstruction statute. It describes obstruction simply as an impact on the due administration of justice.

Section 1503 deems it criminal to use force or threats, or to otherwise act corruptly, in order to influence, obstruct, or impede the due administration of justice.

Federal court rulings clarify that it is not necessary for a defendant to succeed in obstructing justice. Again, I direct your attention to the chart, or the accompanying chart, in your package.

Russell and Aguilar each ruled that it is not necessary that a defendant's endeavor succeed for him to have violated the law. Rather, simply attempting to influence, obstruct, or impede the due administration of justice violates the statute.

Maggitt clearly stated, "it is the endeavor to bring about a forbidden result and not the success in actually achieving the result, that is forbidden."

For the Government to prove a section 1503 crime, it must demonstrate that the defendant acted with intent. This can be shown through use of force, threats by the defendant, or by simply showing that the defendant acted "corruptly." The following chart gives three case histories regarding the term "acting corruptly."

Haldeman and Sprecher held that a defendant acts corruptly by having an evil or improper purpose or intent.

Barfield defined "acting corruptly" as knowingly and intentionally acting in order to encourage obstruction.

Sprecher also ruled the Government need not prove the actual intent of the defendant, but, rather, the intent to act corruptly can be inferred from that proof that the defendant knew corrupt actions would obstruct the justice being administered.

Under section 1503, the Government must also prove that the defendant endeavored to influence, obstruct or impede the due ad-

ministration of justice. The statute is broadly applicable to all phases of judicial proceedings.

Brenson described due administration of justice as "providing a protective cloak over all judicial proceedings, regardless of the stage in which the improper activity occurs."

Section 1503 is also intended to protect the discovery phase of a judicial proceeding, stating that the phrase "due administration of justice" is intended to provide a "free and fair opportunity to every litigant in a pending case in Federal court to learn what he may learn . . . concerning the material facts and to exercise his option as to introducing testimony of such facts."

The House believes that the facts of this case make it very clear that the President did, corruptly, impair the ability of a litigant in Federal court to learn all of the facts that she was entitled to learn. In doing so, the President committed obstruction of justice under section 1503.

The other Federal crime which the President committed was witness tampering under section 1512 of title 18. Again, I refer you to the chart on my right, and to the second page in the package, which depicts the elements of the section.

(b) Whoever knowingly . . . corruptly persuades another person, or attempts to do so, or engages in misleading conduct toward another person, with intent to—

(1) influence, delay or prevent the testimony of any person in an official proceeding; or

(2) cause or induce any person to—

(A) withhold testimony, or withhold a . . . document . . . or an object . . . from an official proceeding;

. . . shall be fined under this title, or imprisoned for not more than ten years or both.

Sections 1503 and 1512 differ in an important way. There does not need to be a case pending at the time the defendant acts to violate the law under section 1512. The statute specifically states that "for the purpose of this section, an official proceeding need not be pending or about to be instituted at the time of the offense . . ." for the crime to be committed.

Putting it another way, a person may attempt to tamper with a witness and commit the crime of witness tampering before such a person is called as a witness and even before there is a case underway in which that person might be called to testify.

For the Government to prove the crime of witness tampering, it must prove that the defendant acted with the intent to cause one of several results. The defendant can be convicted if he acted to influence, delay or prevent the testimony of any person in an official proceeding; or the defendant can be convicted if he acted to cause another person to withhold an object from an official proceeding.

In the case before us, the evidence proves that the President endeavored to cause both of these results on several occasions. And the Government may show intent on the part of the defendant in several ways. It may prove the use of intimidation, physical force or threats; or it may prove intent by showing the use of corrupt persuasion or misleading conduct.

In this case, the evidence shows that on several occasions the President acted corruptly to persuade some witnesses, and engaged in misleading conduct toward others, in order to influence their testimony and cause them to withhold evidence or give wrongful testi-

mony. In each instance, the President violated the witness tampering statute.

How does acting corruptly to persuade a witness differ from engaging in misleading conduct? Section 1515 in title 18 states:

(a) as used in section 1512 [the witness tampering section] . . . of this title and this section—

(3) the term "misleading conduct" means—

(A) knowingly making a false statement; or

(B) intentionally omitting information from a statement and thereby causing a portion of such statement to be misleading, or intentionally concealing a material fact, and thereby creating a false impression by such statement; or

(C) with intent to mislead, knowingly submitting or inviting reliance on a writing or recording that is false, forged, altered or otherwise lacking in authenticity;

The difference between corruptly persuading a witness and engaging in misleading conduct toward the witness depends on the witness' level of knowledge about the truth of the defendant's statement.

Rodolitz held that misleading conduct involves a situation "where a defendant tells a potential witness a false story as if the story were true, intending that the witness believe the story and testify to it before the grand jury."

Let me clarify this detail: If a defendant simply asks a witness to lie and the witness knows that he is being asked to lie, then the defendant is corruptly persuading the witness. In contrast, if a defendant lies to a witness, hoping the witness will believe his story, this is misleading conduct. They are different, but they are both criminal.

Some may ask if it is necessary that the witness who is influenced or tampered with know that he or she might be called to testify? The answer is no.

And both sections 1503 and 1512 answer this question:

The witness tampering statute can be violated even if the victim has not been subpoenaed or listed as a potential witness in an ongoing proceeding.

In Shannon, the U.S. Court of Appeals for the Eighth Circuit reviewed the conviction of a defendant under section 1503 who had attempted to influence the testimony of a person who had not yet been subpoenaed or placed on a witness list. On appeal, the defendant argued that because the target of the obstruction had not yet become an official witness in the case, it was impossible for the defendant to have engaged in obstruction toward her. The court of appeals rejected that assertion. In affirming the conviction, the court held "neither must the target be scheduled to testify at the time of the offense nor must he or she actually give testimony at a later time. It is only necessary that there is a possibility that the target of the defendant's activities be called on to testify in an official proceeding."

The witness tampering statute can be violated even when no case is pending.

Therefore, it will not always be clear to whom the defendant intended the individual to testify—and the statute does not require proof of this.

In Morrison, the United States Court of Appeals for the District of Columbia explained that section 1512 is violated if the defendant asks a person to lie "to anyone who asks." The court held that it

is not necessary that the defendant even use the words "testify" or "trial" when he tries to influence the testimony of the other person. In such a case, there are no subpoenas, there are no witness lists.

The mere attempt to influence the person to lie, if asked, is the crime.

So, under either section 1503 or 1512, the fact that the target of a defendant's actions is not named as a witness, or whether the person is not ever called to be a witness, is immaterial.

The focus of both statutes is on what the defendant believed.

If the defendant believes that it is possible that some person might some day be called to testify at some later proceeding and then acted to influence, delay or prevent his or her testimony, the defendant commits the crime.

Now, some have asserted that an obstruction of justice charge cannot, or should not, be made against the President because some of his acts occurred in the context of a civil trial. There is simply no merit to this view.

There is no question that the obstruction and witness tampering statutes can be violated by acts that occur in civil proceedings. And, case law is consistent in upholding that any attempt to influence, obstruct or impede the due administration of justice in a civil proceeding violates section 1503.

Lundwall, which I referred to earlier, is a perfect example, as it began as a civil case.

The actual language of the witness tampering statute makes it clear that it also applies to civil cases.

The statute provides for enhanced penalties in criminal proceedings—a provision that would be unnecessary if the law were only to apply to criminal cases.

In short, the fact that some instances of the President's misconduct occurred in the course of a civil proceeding does not absolve him of criminal liability.

As Mr. BARR will demonstrate, the President of the United States endeavored and did obstruct justice and tamper with witnesses in violation of the law of the United States.

On numerous occasions he acted with an improper purpose with the intent to interfere with the due administration of justice in the Federal civil rights lawsuit filed by Paula Jones.

President Clinton corruptly endeavored to persuade witnesses to lie. In some cases, he succeeded. In every case, he violated the law.

President Clinton engaged in misleading conduct in order to influence the testimony of witnesses in judicial proceedings. He succeeded. In each case, he violated the law.

President Clinton acted with an improper purpose to persuade a person to withhold objects from a judicial proceeding in which that person was required to produce them. He succeeded, and in so doing he violated the law.

President Clinton made misleading statements for the purpose of deterring a litigant from further discovery that would lead to facts which the judge ordered relevant in a Federal civil rights case. In so doing, he obstructed the due administration of justice in that case and violated the law.

Whether attempting to persuade a person to testify falsely, or to ignore court orders to produce objects; whether suggesting to an in-

nocent person a false story in hopes that he or she will repeat it in a judicial proceeding; or testifying falsely in the hopes of blocking another party's pursuit of the truth—all these acts obstruct justice; all these acts are Federal felony crimes; all these acts were committed by William Jefferson Clinton.

Thank you.

The CHIEF JUSTICE. The Chair recognizes the majority leader.

RECESS

Mr. LOTT. Mr. Chief Justice, I ask unanimous consent that there now be a recess again of the proceedings for 15 minutes. Please return promptly to the Chamber.

There being no objection, at 3:29 p.m., the Senate recessed until 3:47 p.m.; whereupon, the Senate reassembled when called to order by the Chief Justice.

The CHIEF JUSTICE. The Chair recognizes the majority leader.

Mr. LOTT. Mr. Chief Justice, I believe we are ready for the final subject today, from Manager BARR.

The CHIEF JUSTICE. The Chair recognizes Mr. Manager BARR.

Mr. Manager BARR. Thank you, Mr. Chief Justice.

Mr. Chief Justice, Senators, learned counsel for the President, and fellow managers on behalf of the House of Representatives, I thank the Senate for the opportunity to appear today and to present this argument. The House, and I, especially, greatly appreciate the time and effort the Senate has taken on this most important and notable matter.

You have heard the facts summarized by my colleagues. They have described for you the law of perjury and the law of obstruction. I will discuss several of the specific instances in which William Jefferson Clinton violated these laws as set forth in the articles of impeachment presented to you.

The process facing you as jurors, of fitting the Federal law of obstruction of justice and of witness tampering and of perjury into the facts of the case against President William Jefferson Clinton, is not a case in which there is nor should be a great deal of difficulty. It is not a problem of fitting a round peg into a square hole. Quite the contrary. We have a case here, you have a case here, for consideration in which the fit between fact and law is as precise as the finely tuned mechanism of a Swiss watch or as seamless a process as the convergence and confluence of two great rivers such as flow through many of the cities which you represent. The evidence that President William Jefferson Clinton committed perjury and obstruction of justice is overwhelming. These are pattern offenses.

I beg your attention to the following exposition of facts and law. But before commencing, I would like to address three issues that have come up during the course of the proceedings, which I believe might be helpful for all of us to keep in mind as we proceed not only through today's final presentations but tomorrow's and those that will be made by learned counsel for the President.

First, by way of background on the process—that is, the process that brings us, the House managers, to the well of this great body and the trial of the President of the United States of America—as has been indicated previously by one of my colleague House man-

agers, and as everyone here knows full well, the responsibilities, the jurisdiction, and the process between the House of Representatives and the Senate is very different in all three of those respects. Therefore, while coming as no surprise to all of you, all of us in this room, but perhaps to some in America, the steps that each body takes, and should take and must take, are very different.

Just as one example, one might ask, "Why were no witnesses called in the House of Representatives?" A valid question. It deserves a valid answer. That valid answer can be found not simply in impeachment proceedings and the history thereof, but also in the day-in/day-out proceedings in our Federal courts and in our State courts. It can be found in the difference between the body which has responsibility and jurisdiction for charging a crime and the jurisdiction and responsibility of the body that has responsibility for trying a crime, or an alleged crime. The House of Representatives, though it is not in every respect like a grand jury, operates much more like a grand jury than a petit jury. As something akin to a grand jury, we had in mind—and I know you have in mind—being very mindful and knowledgeable about the difference in procedure between the House and Senate on matters of impeachment, that frequently in court cases presented to Federal grand juries—and I suspect similarly to State grand juries—the evidence to the grand jurors themselves is not presented through a long array, a repetitive array of witnesses themselves—witnesses, that is, with firsthand knowledge of each and every fact, which would later be proved at trial. Rather, it is the more standard procedure—certainly in Federal courts, with which I am more familiar—for the Government to present its case to the grand jury by way of summary witnesses. Normally, that would mean case agents that have been working with the assistant U.S. attorneys, or with the U.S. attorney, in gathering and evaluating the evidence that will eventually be brought to bear in the trial of the case.

If one were to be a fly on the wall of a Federal grand jury, one would normally see witnesses for the Government that would come in and discuss the general parameters and the specific evidence of the case that they would present in court, frequently summarizing the actual evidence that would be presented in court by the witnesses themselves. That is the standard operating procedure. That is not to say that there is also not presented voluminous written evidence, documentary evidence. That is frequently the case as well. Nor is that to say that there are not, from time to time, cases presented to Federal grand juries in which there are actual witnesses with firsthand knowledge.

I will simply make a point of which we are all aware. I think as we begin, or in anticipation of your process of sifting through all of this procedure, this evidence, all of this law, we should keep in mind that our job in the House was to approach it necessarily very different from the way you approach your job as jurors, as triers of fact. We, in fact, presented to the House of Representatives, through the work on our Judiciary Committee, a large volume of evidence presented to us and through us to the House of Representatives as the charging body, not the trier of fact body; that is, to essentially summarize and discuss through the words, through the opinions of the independent counsel, as akin to the

chief investigative officer in a grand jury in Federal district court, through the words of many expert witnesses, as it were, who placed all of that in context.

We did not want to usurp your duty, your responsibility given to you by the Constitution as the trier of fact. We are not that presumptuous. It is your responsibility, it is your solemn duty to be the trier of fact. That is very different from our solemn duty, which I believe the House performed admirably in essentially reaching the conclusion that there is probable cause to convict the President of perjury and obstruction of justice. And we did so in a way that is mindful and respectful of your responsibilities, that carried out our responsibilities, and that is familiar to citizens all across this land, because it is essentially the same process that operates in Federal courts where you see also, as here, a very clear distinction between the body that charges the crime, the grand jury, and the body that tries the crime—that is, the jury, and in this case it is the Senate of the United States of America.

A second point that may very well come up, perhaps, in the presentation of the defense by the President's learned counsel, which although very familiar to those of us, as there are many in this Chamber with a legal background, but which I think also is important to keep in mind as you reflect on and later deliberate on the evidence itself in this case, is that there are, indeed, two types of evidence. In virtually every case, whichever finds its way to a court of law and results in a trial, both types of evidence are found, used, considered, and form the basis, legitimately, for the eventual rendering of a decision by a jury. Those two types of evidence are direct and circumstantial.

Frequently—and I know this from actual experience—defense lawyers will attack the Government's case, and one of the standard attacks that they level against the Government's case is that it is based on circumstantial evidence. You even hear that by the folks out there today—not in this room—that are saying, "Oh, all we are seeing is circumstantial evidence, and that is not as good as direct evidence."

Now, to the layperson who is unfamiliar with the ways of our laws, our courts, and the work of this great body, that may have some currency, it may have some surface appeal. They may say, "Well, that commentator was right, and that White House spokesman was right. If all they are doing is talking about circumstantial evidence, they can't have a very strong case, because if they had a strong case, they would have direct evidence."

Well, the fact of the matter is, it is a principle of long and consistent standing in every Federal court in our land, and I suspect every State court in our land, and as directed by every Federal judge to every Federal jury taking evidence that circumstantial evidence is to be, and shall not be afforded any less weight than direct evidence. And triers of fact are directed by judges in every case not to accord less weight to one type of evidence as opposed to the other. That is, in the words of one of my fellow managers, a smokescreen, a red herring if somebody raises as a defense in a case—this case or other cases—that the case is weakened somehow because there is a reliance on circumstantial evidence and it is not found solely on direct evidence.

That is a very important principle. I would appreciate your indulgence in that small foray into some basic precepts that I think all of us, certainly most of you included, need to keep in mind.

Finally, there is one other sort of process argument that one hears sort of floating around in the ether out there that I think also is important for all of us to keep in mind; that is, facts and the law do bear repeating—not endless, not pointless, but appropriate repetition. Even today, even yesterday in the first round of presentations to this body, there was in fact repetition of certain facts, certain aspects of the law. That is not presented to you simply to emphasize a point, simply to make it appear stronger because we say it five times instead of two. There is a very important reason for appropriate repetition.

For example, in a case such as this where you have two sets of laws alleged to have been violated—perjury laws and obstruction of justice laws—each one of those has several different elements. And, in addition to that, it is legitimate, as presenters of facts in the law, for managers, for prosecutors, or plaintiffs' attorneys to take a particular fact, a particular note, and use it to illustrate several different points. For example, one particular fact may provide evidence of motive. It may also provide one of the substantive elements of perjury or obstruction of justice, or it may go to the state of mind of a declarant, a witness. It may provide important evidence with regard to a course of conduct, prior knowledge, and the list goes on.

That is why, Senators, frequently in the course of these particular presentations—and, again, no different from the course of presentation in Federal and, I suspect, State courts throughout the land—in trials there necessarily is and should be, in order to responsibly present all of the evidence in all of its elements, certain repetition. Our job as managers is to make sure we do not abuse that necessity and that we do not in fact offer repetitive notion, repetitive references, without having a very clear and specific purpose, such as I mentioned, for that process.

Finally, before turning to that merger of the law and the facts, which I believe will illustrate conclusively that this President has committed and ought to be convicted on perjury and obstruction of justice, I would respectfully ask that you remember that, under the law of impeachment based on our Constitution, proof beyond a reasonable doubt that the President committed each and every element of one or more violations of provisions of the Federal Criminal Code has never been required to sustain a conviction in any prior impeachment trial in the Senate. However, I can say confidently that I speak for all House managers in relating to you our belief that the record and the law applicable to these two articles of impeachment clearly establish that President William Jefferson Clinton did in fact violate several provisions of title 18 of the United States Code—that is the criminal code—including perjury, obstruction, and tampering with witnesses.

At this point, a lawyer would face, a fortiori—I will say at this point that it therefore goes without saying that indeed exists under every historical standard, every historical benchmark which this Chamber has used—that there is more than sufficient grounds on which you might face a conviction as to both articles.

Beginning then in looking at the facts and the law, both of which you have heard through the words and exhibits of my colleagues and the evidence that you already have, let us look first at the submission of the false affidavit in the Jones case.

We believe the evidence presented clearly establishes that on December 17, 1997, the President encouraged a witness in a Federal civil rights action brought against him, that witness being Monica Lewinsky, to execute a sworn affidavit in that proceeding which he knew to be perjurious, false, and misleading. As other managers have outlined, Monica Lewinsky filed a sworn affidavit in the Jones case that denied the relationship between her and the President. That affidavit was false.

Ms. Lewinsky testified under oath before the grand jury that the scheme to file this false affidavit was devised or hatched during a telephone conversation with the President on December 17, 1997, a call the President initiated to Ms. Lewinsky at 2 or 2:30 a.m. ostensibly to give her the bad news that Betty Currie's brother had been killed in a car accident but apparently, since it consumed the vast majority of the time of that conversation, more importantly, for the President to tell Ms. Lewinsky her name was on the witness list filed in the Jones case and to thereafter discuss during that conversation the President's suggestion to her that she could file an affidavit in the Jones case in order for the purpose of avoiding having to testify in that case—not to cover up but in order to avoid having to testify in an ongoing legal proceeding in U.S. district court.

She testified that both she and the President understood from their conversation they would continue their pattern of covering up. She testified she knew that if she filed a truthful affidavit the Jones lawyers would certainly have deposed her in that case.

The testimony of Mr. Vernon Jordan confirms the President knew Ms. Lewinsky planned to file a false affidavit. He stated that, based on his conversations with the President, that the President knew in advance that Ms. Lewinsky planned to execute an affidavit denying their relationship and that he later informed the President Ms. Lewinsky had signed in fact that false affidavit.

For his part, the President denies asking Ms. Lewinsky to execute a false affidavit. Instead, as he asserted in his response to the House Judiciary Committee's request for admission, he seeks to have you now believe he sought simply to have Ms. Lewinsky execute an affidavit that will "get her out of having to testify."

While being factually correct, this statement reflects a legal impossibility. The President has admitted Ms. Lewinsky was the woman with whom he indeed had an improper intimate relationship while President. And he has admitted he was very concerned over the great personal embarrassment and humiliation he feared would have occurred if that relationship had been revealed in the Jones case. Yet, he would have you believe he cannot remember a call he made to that woman about that case which occurred at 2 o'clock in the morning. His statement is not credible, and the reason it is not credible is because it is not true.

As Mr. Jordan's grand jury testimony corroborates, the President knew what Ms. Lewinsky planned to allege in her affidavit, yet the President took no action to stop her from filing it. As you have

heard in earlier presentations, the President's lawyer, Mr. Robert Bennett, stated in court directly to Judge Wright, when he presented the false affidavit, "There is absolutely no sex of any kind in any manner, shape or form," and that the President was "fully aware of Ms. Lewinsky's affidavit." The President took no action to correct his lawyer's misstatement.

As you have also heard, the President, in his grand jury testimony, tried to disingenuously dissect the words of his attorney to remove his conduct from further examination, even though obviously, and by any reasonable interpretation or inference of the definition given the President, his conduct with Ms. Lewinsky was covered. And he disavowed knowledge of his lawyer's representations by claiming he was not paying attention. That canard has been most ably disposed of in prior presentations both through the words of the managers and the videotape presentations.

Later in the deposition, when Mr. Bennett read to the President the portion of the affidavit in which Ms. Lewinsky denies their relationship and asked him "is that a true and accurate statement as far as you know it," the President answered, "That is absolutely true." This statement is neither credible nor true. It is perjury.

The inescapable conclusion from this evidence is that the President has lied, and continues to lie, about the affidavit. His continued false statements and denials about the affidavit bolster the conclusion of our managers that, in fact, he was part of the scheme to file the false affidavit. The evidence supports Ms. Lewinsky's account that such a scheme did in fact exist between them. The evidence and all reasonable inferences drawn therefrom do not support the President's denial—inferences, I respectfully add, that in your deliberations, as in the deliberations of any jury, are to be and should be based on common sense and deliberated in terms of the light of your experiences in judging human behavior.

Moreover, in engaging in this course of conduct, referring here to the words of the obstruction statute found at section 1503 of the Criminal Code, the President's actions constituted an endeavor to influence or impede the due administration of justice in that he was attempting to prevent the plaintiff in the Jones case from having a "free and fair opportunity to learn what she may learn concerning the material facts surrounding her claim." These acts by the President also constituted an endeavor to "corruptly persuade another person with the intent to influence the testimony they might give in an official proceeding." Such are the elements of tampering with witnesses found at section 1512 of the Federal Criminal Code.

Ms. Lewinsky knew full well her only hope of not having to testify was to file an affidavit that did not truthfully reflect her relationship with the President. The President also knew that if she had filed a true affidavit, without any doubt, it would have caused the Jones lawyers to seek her further testimony—something both coconspirators desperately sought to avoid.

In encouraging her to file an affidavit that would prevent her from having to testify, President Clinton was, of necessity, asking her to testify falsely in an official proceeding. He was attempting to prevent, and in fact did prevent, the plaintiff in that case from discovering facts which may have had a bearing on her claim

against the President. His motive was improper in the language of the law, that is, corrupt. And his actions did influence the testimony of Ms. Lewinsky as a witness in the pending official proceeding in U.S. district court.

Under both sections of the Federal Criminal Code, that is, 1503, obstruction, and 1512, obstruction in the form of witness tampering, the President's conduct constituted a Federal crime and satisfies the elements of those statutes.

With regard to the issue of perjury before the grand jury concerning the affidavit, we as managers would show that when asked before the grand jury whether he had instructed Ms. Lewinsky to file a truthful affidavit, President Clinton testified, "Did I hope she would be able to get out of testifying on an affidavit? Absolutely. Did I want her to execute a false affidavit? No, I did not."

The evidence, however, clearly establishes that the President's statement constitutes perjury, in violation of section 1623 of the U.S. Federal Criminal Code for the simple reason the only realistic way Ms. Lewinsky could get out of having to testify based on her affidavit would be to execute a false affidavit. There was no other way it could have happened. The President knew this. Ms. Lewinsky knew this. And the President's testimony on this point is perjury within the clear meaning of the Federal perjury statute. It was willful, it was knowing, it was material, and it was false.

Let us reflect and see also, members of the jury, how the use of cover stories and the development thereof ties in the facts and the law that constitute a basis on which you might properly find a conviction on perjury and obstruction of justice.

We, as managers, believe that the evidence presented to you also establishes that on December 17 the President encouraged a witness in a Federal civil rights action brought against him to give perjurious, false and misleading testimony when called to testify personally in that proceeding. This was, in essence, the conspiracy—18 U.S.C. 371—to commit both obstruction and perjury.

Throughout their relationship, the President and Ms. Lewinsky, understandably, wished to keep it secret, and they took steps to do that, steps that ultimately turned out to be and constitute criminal acts. For some time, in fact until Ms. Lewinsky testified under oath and under a grant of immunity, their efforts were remarkably successful, all things considered—all circumstances considered. Associates and employees testified in support of the President's stories, and even several Secret Service officers testified to the grand jury that they understood Ms. Lewinsky to be in the Oval Office to "pick up papers." Yet, as Ms. Lewinsky testified, her White House job never required her to deliver papers or obtain the President's signature on any documents. It was all a sham. It was all a cover story. It was all a conspiracy to obstruct.

Ms. Lewinsky testified later, after she left the White House job to work at the Pentagon, that phase 2 of the coverup went into effect. The two coconspirators began to use Ms. Currie as a source of clearance into the White House. This was so even though the purpose of Ms. Lewinsky's visits were almost always to simply see the President. As my colleagues have told you, on December 17, during that 2 a.m., or perhaps it was 2:30, telephone conversation placed by the President to Ms. Lewinsky, he told her her name ap-

peared on the witness list in the Jones case. She testified that at some point in the conversation the President told her, "You know, you can always say you were coming to see Betty or that you were bringing me letters." Ms. Lewinsky testified that she understood this to be "really a reminder of things that they had discussed before." She said it was instantly familiar to her. He knew, or, "I knew," she says—that is, Ms. Lewinsky knew—"exactly what he meant." And so, I respectfully submit, do all of us here know exactly what the President meant.

When the President, then, was questioned before the Federal grand jury if he ever had said something like that to Ms. Lewinsky, he admitted that, well, "I might . . . have said that. Because I certainly didn't want this to come out, if I could help it. And I was concerned about that."

A cover story—which this was—between two teenagers trying to steal a date without their parents' knowledge is one thing. Such would not constitute a crime. It would be something we might even wink at, as long as it didn't happen too often. However, we are not here dealing with two love-struck teenagers trying to circumvent their parents' watchful eyes. We are dealing here with the President of the United States of America and a subservient employee concocting and implementing a scheme that, while perhaps not illegal in its inception—simply trying to keep the relationship private—did in fact deteriorate into illegality once it left the realm of private life and entered that of public obstruction.

However—and this is critical in terms of establishing the illegality or convictability of the President's actions—the situation at the time of that early morning phone call from the President to Ms. Lewinsky was very different from that facing the President during any earlier discussions of a cover story.

Now, in early December 1997, Ms. Lewinsky had been officially named as a witness in a pending judicial proceeding. She was now under an obligation to give complete and truthful testimony and he, the President, was under a legal obligation at that time not to tamper with her or her possible testimony. This is precisely where private lies become public obstruction. This is, in fact, the bright line between childlike pranks and deadly serious obstruction of our legal system. The President and Ms. Lewinsky at that point entered the big leagues, and the President, a highly skilled lawyer, knew it, which is why he went to such lengths to continue the coverup for so many months.

The President knew that if Ms. Lewinsky were to testify that she only brought papers to the President or to see the President's secretary, her testimony would have been neither complete nor truthful. Yet, the President encouraged her to give that untruthful testimony and, in so doing, he broke the law of obstruction of justice. And, in lying about it, he compounded the problem by breaking the law of perjury.

As Mr. CANNON made clear, with regard to section 1503, the general Federal obstruction statute of the criminal code, a person commits the crime of obstruction of justice when he attempts to influence the due administration of justice, which includes all aspects of any civil or criminal case, including pretrial discovery.

Mr. Clinton's encouragement to Ms. Lewinsky to tell something other than the truth certainly would have influenced the discovery process in the Jones case. Courts have consistently held that civil discovery is every bit a part of the due administration of justice, protected by the obstruction statutes, as any other aspect of any other civil or criminal case. And, as Mr. CANNON also made clear with regard to section 1512 of the Federal Criminal Code, a person commits witness tampering when he attempts to influence another person to give false testimony in an official proceeding.

Mr. Clinton did encourage Ms. Lewinsky to give false testimony about her reasons for being in the White House with the President. By encouraging her to lie, the President committed the crime of obstruction of justice under section 1503 and the crime of witness tampering under section 1512 of the Federal Criminal Code.

You have also, Members of the Senate, heard about the President's statements to Ms. Currie on January 18, and then again on the 20th or 21st. The President spoke with her in what was clearly, demonstrably, unavoidably, another potential witness to be influenced in the civil rights case. The President did this in this case by relating to Ms. Currie false and misleading accounts of events about that case as to which he was going to testify, had testified, and, again, with the intent that his recitation of the so-called facts would in fact corruptly influence her testimony.

As the managers have previously described to you, the evidence in this case shows that on that Saturday, January 17, only 2½ hours after the President had been deposed in the Jones case, he called his secretary at home and asked her to come to the White House the next day, a Sunday. She testified—Ms. Currie, that is—testified this was very unusual. It was rare for the President to call and ask her to come in on a weekend, but of course she did—the next day, Sunday, January 18, 1998, at about 5 p.m.

She testified to the grand jury that during her meeting with the President he said to her, "There are several things you may want to know." He then proceeded to ask her a number of questions in succession. You were presented evidence of these five statements by other managers. I will only emphasize that it was at that time and in that way, in that manner, that the President led Ms. Currie through a series of statements and determinate questions to establish a set of facts describing his relationship with Ms. Lewinsky at the White House that supported his false testimony.

As you have heard, Ms. Currie stated under oath she indicated her agreement with each of the President's statements, even though she knew that the President and Ms. Lewinsky had, in fact, been alone in the Oval Office and in the President's study. Prosecutors frequently see this pattern. It is not unknown to prosecutors, Federal or State. You frequently see this pattern of agreeing to things that the person knows are not true, where you have a dominant person suggesting testimony to another person who is in a subordinate relationship. This, I submit, is yet another bright line between a private lie and public obstruction.

During the President's grand jury testimony he was asked about his statements to Ms. Currie. He testified he was trying to determine whether his recollection was accurate. As he put it, "I was trying to get the facts down. I was trying to understand what the

facts were." This fits the same pattern of a classic obstruction of prosecution, in which a defendant suggests a story to someone in the hopes that they will later testify consistent with that earlier suggestion. Indeed, when defendants in Federal courts defend against obstruction prosecutions in those type cases, they frequently rely on the very same defense the President raises here—that he was merely and oh-so-innocently encouraging the other person to tell the truth.

You may want to see, as an example of an unsuccessful effort at such a defense, the case of United States v. O'Keefe, a Fifth Circuit case from 1983. In that case, Mr. O'Keefe did not ask someone to lie. He did not even say, "I suggest you lie." Rather, as is almost always the case in white-collar obstruction prosecutions, his words, along with their setting and their context, suggested a certain story—in that case as well as this, a false story. Just as Mr. O'Keefe did not expressly ask someone to lie, Mr. Clinton never asked someone to lie. He didn't have to. He was too smart for that, and he had witnesses who, at that time at least, were willing, ready, and able to do his bidding. The President lied to the grand jury when he made these statements mischaracterizing his earlier statements to Ms. Currie, just as he tampered with her as a likely witness 9 months earlier, in January.

The President's assertion—that he simply was trying to understand what the facts were—lacks even colorable credibility, when one considers that he had already testified. It was obviously too late to try to recollect what the "facts" were. If in fact one accepts that, then he is admitting he didn't testify to what the facts were under oath at the deposition, because he didn't say, "I don't know; I have to ask Ms. Currie." He testified under oath as to what the facts purportedly were. Then he would have us believe that he had to, after the fact of the deposition, go back and find out what the facts were from somebody else.

That is an argument that cannot be made with a straight face.

In any event, Ms. Currie could not have told him what the true facts were, because he alone knew what they were.

The defenses and explanations the President's defenders raise to justify why the President would make factual assertions to Ms. Currie about the circumstances of his relationship with Ms. Lewinsky, right after his testimony, are many. For example, one administration witness who appeared before the House Judiciary Committee actually suggested that such "coaching" is proper as a method whereby an attorney "prepares" a client or witness for testimony.

Of course, such a suggestion in this case would be ludicrous. President Clinton obviously did not and could not represent Ms. Currie as her attorney. Yet, it is this sort of explanation, straining credulity, that illustrates the lengths to which the President's defenders have gone to try to explain away the obvious—that there was no legitimate reason why the President made the statements to Ms. Currie after his grand jury testimony, other than to "suggest" to her what her testimony should be. In Federal criminal trials, defendants go to jail for such obstruction. In the case before you, we submit this clearly forms a proper basis on which to con-

vict this President of obstruction of justice for witness tampering and subsequent perjury.

Please keep in mind also, it is not required that the target of the defendant's actions actually testify falsely. In fact, the witness tampering statute can be violated even when there is no proceeding pending at the time the defendant acted in suggesting testimony. As the cases discussed by Manager CANNON demonstrate, for a conviction under either section 1503, obstruction, or 1512, obstruction by witness tampering, it is necessary only to show it was possible the target of the defendant's actions might be called as a witness. That element has been more than met under the facts of this case.

It was not only likely Ms. Currie would be called, the President's own testimony, deliberate testimony to the grand jury, pretty much guaranteed that she would be called. He wanted her called so she could then buttress his false testimony. His actions clearly, we believe, violated both the general obstruction statute and the witness tampering statute in these particulars in this regard.

With regard to the obstruction regarding the subpoena for the President's gifts to Ms. Lewinsky, let us look at the merger of the facts and the law, as has been discussed. While the witness tampering statute makes it a crime to attempt to influence the testimony of a person, it also makes it a crime to influence a person to withhold an object from an official proceeding; in other words, to tamper with evidence. The facts of this case, we as House managers believe, clearly show the President corruptly engaged in, encouraged, or supported a scheme with Monica Lewinsky and possibly others to conceal evidence that had been subpoenaed lawfully in the Jones case.

On December 19, 1997, Ms. Lewinsky was served with a subpoena in the Jones case requiring her to produce each and every gift given to her by the President. Then, on December 28, Ms. Lewinsky again met with the President in the Oval Office, at which time they exchanged gifts. They also discussed the fact that the lawyers in the Jones case had subpoenaed all the President's gifts to Ms. Lewinsky and especially a hatpin. The hatpin apparently had sentimental significance to both of them, in that it was the very first gift the President gave to Ms. Lewinsky. During that conversation, Ms. Lewinsky asked the President whether she should put the gifts away outside her house or give them to someone, maybe Betty.

At that time, according to Ms. Lewinsky's sworn testimony, the President responded, "Let me think about that." Apparently he did, because later that day, that very same day, only a few hours after Ms. Lewinsky and the President had met to discuss what to do with the gifts, Ms. Currie called Ms. Lewinsky, setting in motion the great gift exchange.

According to Ms. Lewinsky, Ms. Currie said, "I understand that you have something to give me," or "[t]he President said you have something to give me." In her earlier proffer, or offer of evidence, to the independent counsel, prior to her testimony before the grand jury, Ms. Lewinsky said Ms. Currie had said the President had told her—that is, Ms. Currie—that Ms. Lewinsky wanted her to hold on to something for her.

After their conversation at the Oval Office, Ms. Currie drove to Ms. Lewinsky's apartment for only the second time in her life. There she picked up a box sealed with tape and on which was written "Please, do not throw away." Ms. Currie then took the box, drove to her home, and placed the box under her bed.

In her grand jury testimony, Ms. Currie testified that she and Ms. Lewinsky did not discuss the content of the box, nor did she open it when she got it to her home, but she knew—she "understood" what was in the box—that it contained the gifts from the President to Ms. Lewinsky. In fact, Ms. Lewinsky testified Ms. Currie was not at all confused, surprised, or even interested when she handed the box over to her.

The legal impact, the legal import, of this is that there is no question that if the gifts had actually been produced to the Jones lawyers, they would have established a significant relationship between the President and Ms. Lewinsky. Knowledge of the gifts, at a minimum, would have caused the Jones lawyers to inquire further as to the nature of the relationship between the President and Ms. Lewinsky.

Her failure to turn over the gifts as required by the lawful subpoena served on her was, in the words of the witness tampering statute, the withholding of an object from an official proceeding. We believe the evidence shows, clearly establishes, that the President corruptly persuaded Ms. Lewinsky to withhold these objects from the lawful proceedings in the Jones case.

In his grand jury testimony, the President asserted he encouraged Ms. Lewinsky to turn over the gifts. Ms. Lewinsky's testimony directly contradicts that. Importantly, all other evidence of subsequent acts corroborates her testimony, not the President's. For one thing, the gifts were never turned over. In fact, Ms. Lewinsky testified she was never under any impression, from anything the President said, that she should turn over the gifts to the attorneys for Ms. Jones. Quite the opposite.

While the President asserts he never spoke about this matter with Betty Currie, he would have us believe that his personal and confidential secretary would, on a Sunday, drive to the home of the woman with whom he was having an inappropriate intimate relationship, take possession of a sealed box which she believed to contain gifts given by the President, hide the box under the bed in her home, never question the person giving her the box, and never even mention to the President she had received the box of gifts.

The President's position, as he would have you believe, is not credible. It defies the evidence. It defies any reasonable interpretation or inference from the evidence. It defies common sense. And it stands in defiance of Federal law.

The only reasonable interpretation of the facts is that, following the discussion between the President and Ms. Lewinsky earlier in the day on December 28, the President decided Ms. Lewinsky had actually come up with a pretty good suggestion: The gifts should be put away outside of her home.

As jurors, you may reasonably presume, based on the evidence and all reasonable inferences therefrom, along with common sense, that it was the President who directed Ms. Currie to call Ms. Lewinsky to tell her she understood she "had something for her."

And that happened to be evidence under lawful subpoena in a civil proceeding in a U.S. district court.

Ms. Currie would have no independent reason to even consider such a course of action on her own. She had never, other than one time in her life, ever driven to Ms. Lewinsky's home. She did so on this Sunday not because she developed a sudden hankering to do so or because she routinely visited interns at their homes—she didn't—or because she had a vision; she did it because the President would have asked her to do it.

Now, the President further points out that Ms. Currie has testified that Ms. Lewinsky called her to arrange to pick up the gifts, rather than the other way around. In fact, although Ms. Currie has testified inconsistently as to whether Ms. Lewinsky called her or she called Ms. Lewinsky, she actually deferred to Ms. Lewinsky's superior knowledge of the facts.

However, even if one were to accept, for purposes of argument, that it was Ms. Lewinsky who initiated the call, the President's avowal that he had no knowledge of or involvement with the hiding or the transfer of the gifts is still not plausible. It is totally unreasonable to presume that the private secretary to the President of the United States would drop what she was doing, travel to the home of a former intern, pick up a box, and hide it in her home simply because the former intern demanded that she do so. All of this had to have been done—reasonably, plausibly, credibly was done—because of communication directed and an understanding between the President and his personal secretary.

There is one more point on this. Ms. Lewinsky testified she met with the President for 45 minutes on December 28, at which time they discussed the fact that she had been subpoenaed, along with the need to conceal the gifts. The President's testimony directly conflicts with hers on this point.

First, the evidence, however, establishes that his professed inability to remember whether she and the gifts had been subpoenaed is unbelievable and false.

Please keep in mind when evaluating the circumstantial evidence to determine whether a false statement was made intentionally, the most important evidence to consider is the existence of a motive to lie. It is the calculated falsehood, combined with a clear motive to lie, that leads, day in and day out in Federal court proceedings, to the conclusion that false statements were intentional.

Also, we urge you to bear in mind that the law will not allow a person to testify, "I don't recall," or, "I'm not sure," when such answers are unreasonable under the circumstances.

Former U.S. Representative Patrick Swindall attempted this course of action when he appeared before a Federal grand jury in the Northern District of Georgia in 1988. His evasive and false answers to the grand jury provided the basis for his subsequent conviction.

Feigned forgetfulness or feigned assertions that grand jury questions are ambiguous and therefore cannot be answered cannot, and in fact in Federal proceedings do not, shield defendants from criminal liability for perjury or impeding the conduct of a Federal grand jury; nor should such efforts be allowed to shield President Clinton

from conviction on these two articles of impeachment as to these facts.

The President, a man of considerable intelligence and gifted with an exceptional memory—as somebody described, "a prodigious memory"—can and should be inferred to have clearly understood what he was doing, as well as the logical and reasonable consequences of his actions, as well as the questions put to him by the independent counsel in the grand jury questioning.

And he had a clear motive to falsely state to the grand jury that he could not recall that he knew on December 28 that Ms. Lewinsky had been subpoenaed and that the subpoena called for her to produce the gifts, for to have acknowledged such would have helped establish a motive on his part for orchestrating the concealment of the gifts.

And as we have also seen and understand, there is no doubt the President's statement of feigned forgetfulness was material not only to the matters before the Jones case but to matters subsequently before the grand jury.

Now, the President's counsel may very well argue the fact that the President gave Ms. Lewinsky additional gifts on that same day—that is, December 28—as proof of the President's assertions that he didn't know there was anything wrong going on here. Their argument, if they make it, cannot be sustained in the face of so much evidence to the contrary. The evidence in fact points to a much more plausible explanation. The additional gifts given that day demonstrate the President's continued confidence that Ms. Lewinsky would keep to their earlier agreement to conceal their relationship.

It is also plausible that the additional gifts were intended as a further gesture of affection by the President to Ms. Lewinsky to help ensure she would not testify against him. Such a fact pattern also finds its way to those of us who have a prosecutorial background in Federal courts on a regular basis.

We have heard about the job search and its relationship to perjury and obstruction. Let me tie the facts related to job search and the law applicable thereto together. We believe, as managers, that the evidence shows that, beginning on or about December 7, 1997, and continuing through and including January 14 of last year, the President intensified and succeeded in an effort to secure job assistance for a witness in a Federal civil rights case brought against him in order to corruptly prevent the truthful testimony of that witness in that proceeding at a time when the truthful testimony of that witness would have been harmful to him.

Monica Lewinsky is, if nothing else, a persistent witness. After she was transferred out of the White House, and after being rebuffed repeatedly by others to secure assistance from the President in gaining a job that met her expectations and wishes, she decided to change tack. She wrote directly to the President, asked for, and received a meeting in which she asked him to find her a job in New York.

The day before the President filed his answers to the interrogatories in the Jones case, as Manager Gekas discussed, the President asked Ms. Currie to set up a meeting for Ms. Lewinsky with Mr. Vernon Jordan. Two days after he filed his answers, in which

he refused to answer whether he had ever had any extramarital relationships in the context of his public jobs, that meeting in fact occurred. But Mr. Jordan made no particular effort to assist Ms. Lewinsky at that time. In fact, as he later testified, he had no recollection of the meeting. There was, of course, at that early stage, no urgency.

The situation, however, changed dramatically in early December, 1997. On December 6, the President became aware that Ms. Lewinsky had been named as a witness in the Jones case. Early that day, she had thrown a tantrum at the White House northwest gate when she was unable to meet with the President when she wanted. Despite the President's initial anger over Ms. Lewinsky's behavior and over the acts of some of the Secret Service officers a mere 5 days later, Ms. Lewinsky, in fact, secured a second meeting with Mr. Vernon Jordan. But this time, unlike previously, this powerful Washington lawyer jumped for the former intern. He immediately placed calls to three major corporations on her behalf.

On December 11, Judge Wright ordered the President to answer Paula Jones' interrogatories. On December 17, the President suggested to Ms. Lewinsky she file the affidavit and continue to use their cover stories in the event she was asked about her relationship with the President. The next day she had two interviews in New York City arranged by Mr. Jordan. On December 22, Ms. Lewinsky met with an attorney at a meeting arranged by Mr. Jordan. The following day she had another job interview arranged by Mr. Jordan.

On January 7, Ms. Lewinsky signed the false affidavit and proudly showed the executed copy to Mr. Jordan. The next day, Ms. Lewinsky had an interview arranged by Mr. Jordan with MacAndrews & Forbes in New York City, an interview that apparently went poorly. To remedy this, she called Mr. Jordan and so informed him. Mr. Jordan then called the CEO of MacAndrews & Forbes, Mr. Ron Perelman to, in Mr. Jordan's words, "make things happen, if they could happen." After Mr. Jordan's call to Mr. Perelman, Ms. Lewinsky was called and told that she would be interviewed again the very next morning. That following day she was reinterviewed and immediately offered a job. She then called Mr. Jordan to tell him and he passed the information on to Ms. Currie. "Tell the President, mission accomplished."

Now, what are you as jurors entitled to conclude from all of this as a matter of law and of fact? Until it became clear that Ms. Lewinsky would be a witness in the Jones case, little was done to help her with her job search. Once she was listed as a witness, things changed dramatically and rapidly. Just days after she is listed on the Jones witness list, she gets a second meeting with one of the most influential men in Washington. But, unlike their first meeting, Mr. Jordan now makes three calls on her behalf to get her a job interview. A week later the President proposed the affidavit. The next day, Ms. Lewinsky has two job interviews in New York. A few days later, Mr. Jordan arranges for an attorney to represent her. The next day she has another job interview. Two weeks later she signed the affidavit. The next day she has another interview.

"Mission accomplished." Obstruction accomplished. Another potentially embarrassing witness in the bag.

Were Ms. Lewinsky to get a job and move to New York, this would help the President substantially in two very important ways. First, it would presumably create a happy and probably compliant witness, one willing, if not eager, to support the President's false testimony. Second, it would make Ms. Lewinsky much more difficult, if not impossible, to reach as a witness in the Jones case. In fact, this is precisely what the President himself suggested to Ms. Lewinsky during their December 28 meeting, according to her sworn testimony.

To put it plainly, but respectfully, if that is not obstruction by witness tampering, one would be hard pressed to find a fact pattern that was.

This aspect of the case against the President is extremely important. She gets the job. And what did the President get? The key affidavit to throw the Jones lawyers off the trail and possibly a witness outside the practical reach of the attorneys, much like the absent witnesses we have seen in large numbers in the campaign financing investigations.

The President's efforts were designed to and did obstruct justice and tamper with a witness. And his actions, we submit, were criminal under both sections 1503 and 1512 of the Federal Criminal Code.

The President's false statements to his senior aides. Here, too, the facts and the law come together and would form the basis, we respectfully submit, for a conviction on articles of impeachment. All that needs to be shown to prove a violation of the statute is that the defendant engaged in misleading conduct with another person to influence their testimony. Misleading conduct is not a term of art for which there is no definition. It is specifically defined in the Federal Criminal Code as section 1515. When you, as jurors, properly apply these definitions to the terms of section 1512, the tampering statute, and then turn your attention to the facts in this case wherein the President repeatedly and deliberately gave false explanations to aides he knew or should reasonably have known would be witnesses in Federal judicial proceedings, the conclusion he violated this statute is, we respectfully submit, unavoidable. I point to one case previously mentioned, the O'Keefe case as particularly, perhaps, applicable to deliberations on this matter.

Finally, statements by the President and his lawyer concerning the affidavit during the Jones deposition. The obstruction statute may also be violated, as you know, by a person who gives false testimony. In the Jones case, the President allowed his attorney to make false and misleading statements to a Federal judge. This part of the obstruction scheme was accomplished by characterizing as true the false affidavit filed by Ms. Lewinsky in order to prevent questioning by the Jones lawyers, testimony which had already been deemed relevant by the judge in that case. The President's lawyer, as you have heard, objected to the innuendo of certain questions asked of the President, and at that point during the deposition pointed out that Ms. Lewinsky had signed an affidavit denying the relationship with the President. He then made the famous statement about there being no relationship in any way, shape or form or kind.

Following this statement, Judge Wright warned Mr. Bennett about making an assertion of fact in front of the witness—that is, in front of the President—in which he replied:

> I am not coaching the witness. In preparation of the witness for this deposition, the witness is fully aware of [the] affidavit, so I have not told him a single thing he doesn't know.

The President's lawyer did not know what an understatement that was.

Later, on September 30, 1998, long after the deposition and after the full evidence of Ms. Lewinsky's relationship with the President became public, Mr. Bennett wrote to Judge Wright to inform her that she should not rely upon the statements he made during the President's deposition because parts of the affidavit were "misleading and not true." "Misleading and not true." Sounds like perjury. Sounds like obstruction.

Which brings us full circle, full circle from a false affidavit confirming earlier concocted cover stories, through a web of obstruction, to a letter from a distinguished lawyer forced to do what no lawyer wants to do, but every honorable lawyer must do when confronted with clear evidence their client has misled a court, and that is to correct a record of falsity even to the detriment of their client.

What we have before us, Senators and Mr. Chief Justice, is really not complex. Critically important, yes, but not essentially complex. Virtually every Federal or State prosecutor—and there are many such distinguished persons on this jury—has prosecuted such cases of obstruction before in their careers—perhaps repeatedly—involving patterns of obstruction, compounded by subsequent cover-up perjury. The President's lawyers may very well try to weave a spell of complexity over the facts of this case. They may nitpick over the time of a call or parse a specific word or phrase of testimony, much as the President has done. We urge you, the distinguished jurors in this case, not to be fooled.

Mr. HARKIN addressed the Chair.

The CHIEF JUSTICE. The Senator from Iowa.

Mr. HARKIN. Mr. Chief Justice, I object to the use and the continued use of the word "jurors" when referring to the Senate sitting as triers in a trial of the impeachment of the President of the United States.

Mr. Chief Justice, I base my objection on the following:

First, article I, section 3, of the Constitution says the Senate shall have the sole power to try all impeachments—not the courts, but the Senate.

Article III of the Constitution says the trial of all crimes, except in the cases of impeachment, shall be by jury—a tremendous exculpatory clause when it comes to impeachments.

Next, Mr. Chief Justice, I base my objection on the writings in "The Federalist Papers," especially No. 65 by Alexander Hamilton, in which he is outlining the reasons why the framers of the Constitution gave the Senate the sole power to try impeachments. I won't read it all, but I will read this pertinent sentence:

> There will be no jury to stand between the judges who are to pronounce the sentence of the law and the party who is to receive or suffer it.

Next, Mr. Chief Justice, I base my objection on the 26 rules of the Senate, adopted by the Senate, governing impeachments. Nowhere in any of those 26 rules is the word "juror" or "jury" ever used.

Next, Mr. Chief Justice, I base my objection on the tremendous differences between regular jurors and Senators sitting as triers of an impeachment. Regular jurors, of course, are chosen, to the maximum extent possible, with no knowledge of the case. Not so when we try impeachments. Regular jurors are not supposed to know each other. Not so here. Regular jurors cannot overrule the judge. Not so here. Regular jurors do not decide what evidence should be heard, the standards of evidence, nor do they decide what witnesses shall be called. Not so here. Regular jurors do not decide when a trial is to be ended. Not so here.

Now, Mr. Chief Justice, it may seem a small point, but I think a very important point. I think the framers of the Constitution meant us, the Senate, to be something other than a jury and not jurors. What we do here today does not just decide the fate of one man. Since the Senate sits on impeachment so rarely, and even more rarely on the impeachment of a President of the United States, what we do here sets precedence. Future generations will look back on this trial not just to find out what happened, but to try to decide what principles governed our actions. To leave the impression for future generations that we somehow are jurors and acting as a jury——

Mr. GREGG. Mr. Chief Justice, I call for the regular order and I ask, as a parliamentary point, whether it is appropriate to argue what I understand is a statement as to the proper reference relative to Members of the Senate. This is not a motion. And if it is a motion, it is nondebatable, as I understand it.

The CHIEF JUSTICE. Yes. I think you may state your objection, certainly, but not argue. The Chair is of the view that you may state the objection and some reason for it, but not argue it on ad infinitum.

Mr. HARKIN. Mr. Chief Justice, I was stating the reason because of the precedents that we set, and I do not believe it would be a valid precedent to leave future generations that we would be looked upon merely as jurors, but something other than being a juror. That is why I raise the objection.

The CHIEF JUSTICE. The Chair is of the view that the objection of the Senator from Iowa is well taken, that the Senate is not simply a jury; it is a court in this case. Therefore, counsel should refrain from referring to the Senators as jurors.

Mr. HARKIN. I thank the Chair.

Mr. Manager BARR. I thank the Court for his ruling. We urge the distinguished Senators who are sitting as triers of fact in this case not to be fooled. We urge you to use your common sense, your reasoning, your varied and successful career experiences, just as any trier of fact and law anywhere in America might do. Just as other triers of fact and law do, so, too, have each of you sworn to decide these momentous matters impartially. Your oath to look to the law and to our Constitution demands this of you. As this great body has done on so many occasions in the course of our Nation's

history, I and all managers are confident you will neither shrink from nor cast aside that duty.

Rather, I urge and fully anticipate that you will look to the volume of facts and to the clear and fully applicable statutes and conclude that William Jefferson Clinton, in fact and under the law, violated his oath and violated the laws of this land and convict him on both articles of impeachment. Even though such a high burden—that is, proof of criminal violations—is not strictly required of you under the law of impeachment, in fact, such evidence is here. That higher burden is met.

Perjury is here; obstruction is here in the facts and the law which forms the basis for the articles of impeachment in the House which we believe properly would form the basis for conviction in the Senate. Perjury and obstruction, we respectfully ask you to strike down these insidious cancers that eat at the heart of our system of Government and laws. Strike them down with the Constitution so they might not fester as a gaping wound poisoning future generations of children, poisoning our court system, and perhaps even future generations of political leaders.

Just as Members of both Houses of Congress have unfortunately over the years been convicted and removed from office for perjury and obstruction, and just as Federal judges have been removed from life tenure for perjury and obstruction, so must a President; so sadly should this President.

Thank you, Mr. Chief Justice, and thank you, Members of the U.S. Senate sitting here as jurors of fact and law in the trial of President William Jefferson Clinton.

The CHIEF JUSTICE. The Chair recognizes the majority leader.

ADJOURNMENT UNTIL 10 A.M. TOMORROW

Mr. LOTT. Mr. Chief Justice, I remind all who are participants in these proceedings that we will begin at 10 a.m. on Saturday, January 16, and we are expected to conclude sometime between 3 p.m. and 3:30 p.m. I had earlier indicated concluding as late as 5 p.m. I understand that we will conclude between 3 p.m. and 3:30 p.m. Therefore, pursuant to the previous consent agreement, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection at 5:10 p.m., the Senate, sitting as a Court of Impeachment, adjourned until Saturday, January 16, 1999, at 10 a.m.

SATURDAY, JANUARY 16, 1999

[From the Congressional Record]

The Senate met at 10:01 a.m. and was called to order by the Chief Justice of the United States.

TRIAL OF WILLIAM JEFFERSON CLINTON, PRESIDENT OF THE UNITED STATES

The CHIEF JUSTICE. The Senate will convene as a Court of Impeachment. The Chaplain will offer a prayer.

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Gracious God, You have given us magnificent promises to claim for today. You have told us that if we wait on You, we will renew our strength. You have assured us that You will use our minds to think clearly in response to Your inspiration. Courage is offered, patience provided, and wisdom engendered.

In this quiet moment, grant the Senators Your power to persevere, Your peace for equipoise, Your judgment for the evaluation of the facts presented, and Your will to guide their decisions. As You have blessed us with this day, we praise You that You will show the way. Through our Lord and Saviour. Amen.

The CHIEF JUSTICE. The Sergeant at Arms will make the proclamation.

The Sergeant at Arms, James W. Ziglar, made proclamation as follows:

Hear ye! Hear ye! Hear ye! All persons are commanded to keep silent, on pain of imprisonment, while the Senate of the United States is sitting for the trial of the articles of impeachment exhibited by the House of Representatives against William Jefferson Clinton, President of the United States.

The CHIEF JUSTICE. The majority leader is recognized.

Mr. LOTT. Mr. Chief Justice, it is my understanding that the House managers intend to extend their presentation until approximately 3 p.m., with a lunch break at approximately 12:40 or 12:45.

I remind all Senators to remain standing at their desks each time the Chief Justice enters and departs the Chamber. We want to maintain the very best decorum.

One other point. We had been scheduled to go from 10:05 straight through until 12:40, but we will probably take a very short 10-minute break after the presentation by Manager GRAHAM. It will be very important that Members tend to business and return promptly to the Chamber so that we can complete activity as early as possible this afternoon.

I yield the floor, Mr. Chief Justice.

THE JOURNAL

The CHIEF JUSTICE. If there is no objection, the Journal of proceedings of the trial is approved to date.

Pursuant to the provisions of Senate Resolution 16, the managers for the House of Representatives have 15 hours 37 minutes remaining to make the presentation of their case. The Senate will now hear you. The Presiding Officer recognizes Mr. Manager BUYER.

Mr. Manager BUYER. I thank you, Mr. Chief Justice. I thank the Senators, and the counsel for the President.

I am STEVE BUYER, the House manager from the Fifth District of Indiana. I thank all of you for your attention the past several days. It has not been easy for the House managers to argue from a dry record. I ask for your patience. The House managers are prepared to call witnesses and offer to develop the evidence as the trial proceeds.

This morning, the managers on the part of the House are going to present why the offenses you have been hearing over the course of the last several days require the President's removal from office. I will discuss why the offenses attack the judicial system which is a core function of the Government, and how perjury and obstruction of justice are not private acts. These are public crimes and therefore quintessential impeachable offenses, for the President's premeditated assault on the administration of justice must be interpreted as a threat to our system of government.

I will be followed by Mr. Manager GRAHAM of South Carolina who will discuss the precedents in impeachment cases, and then he will be followed by Mr. Manager CANADY. He will discuss how the felonies constitute high crimes and misdemeanors as envisioned by the Founding Fathers and why they warrant his removal from office.

While this is day 3 of our presentation, it is important for the Senate to be fully informed as to the facts, the law and the consequences. Please indulge me for a quick reiteration of the facts.

On May 27, 1997, nine Justices of the Supreme Court of the United States unanimously ruled that Ms. Jones could pursue her Federal civil rights actions against William Jefferson Clinton. On December 11, 1997, U.S. District Court Judge Susan Webber Wright ordered President Clinton to provide Ms. Jones with answers to certain routine questions relevant to the lawsuit.

Acting under the authority of these court orders, Ms. Jones exercised her rights, rights every litigant has under our system of justice. She sought answers from President Clinton to help prove her case against him, just as President Clinton sought and received answers from her. President Clinton used numerous means, then, to prevent her from getting truthful answers.

On December 17, 1997, President Clinton encouraged a witness to file a false affidavit in the case and to testify falsely if she were called to testify in this case. Why? Because her truthful testimony would have helped Ms. Jones and hurt his case.

On December 23, 1997, he provided under oath false written answers to Ms. Jones' questions. On December 18, 1997, President Clinton began an effort to get the witnesses to conceal evidence that would have helped Ms. Jones. Throughout this period, he intensified efforts to provide the witness with help in getting a job to ensure that she carried out his designs.

On January 17, 1998, President Clinton provided under oath numerous false answers to Ms. Jones' questions during that deposition in the civil case. In the days immediately following the deposition, President Clinton provided a false and misleading account to another witness, his secretary, Betty Currie, in hopes that she would substantiate the false testimony he gave in the deposition.

All of these unlawful actions denied Ms. Jones her rights as a litigant, subverted the fundamental truth-seeking function of the

U.S. District Court for the Eastern District of Arkansas, and violated President Clinton's constitutional oath to "preserve, protect, and defend the Constitution of the United States." And, further, it violated his constitutional duty to "take care that the laws be faithfully executed."

Beginning shortly after his deposition, President Clinton became aware that the Federal grand jury empaneled by the U.S. District Court for the District of Columbia was investigating his unlawful actions before and during his civil deposition. President Clinton made numerous false statements to potential grand jury witnesses in hopes that they would repeat these statements to the grand jury.

On August 17, 1998, President Clinton appeared before the grand jury by video under oath and he provided numerous false answers to questions asked. These actions impeded the grand jury's investigation; it subverted the fundamental truth-seeking function of the U.S. District Court for the District of Columbia, and they also violated President Clinton's constitutional oath to "preserve, protect, and defend the Constitution of the United States" and his constitutional duty as the Chief Executive Officer to "take care that the laws be faithfully executed."

You will hear next week, perhaps, from the President's lawyers that the offenses charged by the House are not impeachable; in other words, that even if the allegations as set forth in the articles of impeachment are true, so what? See, the House managers have begun to refer to this as the "so what" defense. I am not offended by the "so what" defense, because if that is all you have, then try it. You see, there are only a few basic ways that you can actually defend a case. You can defend a case on the facts, you can defend a case on the law, you can defend a case on the facts and the law.

We hear in this case—we hear very often—that the facts are indefensible. And you also hear that if you are not going to call witnesses on the facts, then I guess you better argue on the law. So, then, what is the argument on the law? What you do, then, in the defending of a case, is you argue procedure, you attack the prosecutor, you attempt to confuse those who sit in judgment on the laws so you don't follow your precedent. You go out and obtain, from your political allies and friends in the academic world, signatures on a letter saying that the offenses as alleged in the articles of impeachment do not rise to the level of an impeachable offense. This "rise to the level" has somehow become the legal cliche of this case. You have all so often heard it and some have even spoken it.

The House managers chose not to go out into the academic world and obtain signatures on our own letter that would have said why the offenses are impeachable. We then would have had this war of dueling academics. They have a letter of 400 signatures. We get a letter of 400 signatures. They add 500 to it; now they have 900. We go out and get 1,000. We chose not to do that. Do you know why? Because the House managers have the precedents of the Senate on our side. We have the precedents of the Senate. Mr. Manager GRAHAM will discuss those precedents.

If I am prosecuting a defendant for perjury and obstruction of justice in White County Superior Court before Judge Bob Mrzlack in Monticello, IN, and I have this perjury and obstruction of justice

case on a Thursday, and I know that the judge has three other cases—he has a case on Monday, he has a case on Tuesday, and he has a case on Wednesday—I am going to watch what the judge is going to do because I am curious with regard to the precedent.

So, on Monday of that week Judge Mrzlack tries a case of a public official for perjury, and I watch what he does. He convicts him for perjury. On Tuesday, he tries a public official for obstruction of justice, and he convicts him. On Wednesday, Judge Mrzlack tries a public official for grand jury perjury, and he convicts him. My case now comes up on Thursday for a public official for obstruction of justice and grand jury perjury and perjury on top of perjury. I would say, based on the precedents, it is not looking good for the defendant whom I am about to prosecute.

The White House lawyers are hoping that those of you in this Chamber who have voted to remove Federal judges for similar offenses in the past have a feigned memory. And if you don't have a feigned memory, then we will try to confuse you—they will attempt to confuse you on the law.

So, when I hear the "so what," it is the position of the House that what the President did does matter; that by his actions, the President did commit high crimes and misdemeanors. The House is prepared to establish that the President, William Jefferson Clinton, willfully and repeatedly violated the rule of law and abused the trust placed upon him by the American people.

Now let me address how the offenses charged in the articles of impeachment attack the judicial system. The offenses as charged in the articles of impeachment against our system of government are the core of the concept of high crimes and misdemeanors. Perjury and obstruction of justice are, therefore, quintessential impeachable offenses. Indeed, it is precisely their public nature that makes them offenses. Acts that are not crimes when committed outside the judicial realm become crimes when they enter the judicial realm. Lying to one's spouse about an extramarital affair is not a crime; it is a private matter. But telling that same lie under oath before a Federal judge, as a defendant in a civil rights sexual harassment lawsuit, is a crime against the state and is therefore a public matter.

Hiding gifts given to conceal the affair is not a crime; it is a private matter. But when those gifts are the subject of a court-ordered subpoena in a sexual harassment lawsuit, the act of hiding the gifts becomes a crime against the state called obstruction of justice and is, therefore, a public matter. Our law has consistently recognized that perjury subverts the judicial process. It strikes at our Nation's most fundamental value—the rule of law.

In "Commentaries on the Laws of England," Sir William Blackstone differentiated between crimes that "more directly infringe the rights of a public or commonwealth taken in its collective capacity, and those which, in a more peculiar manner, injure individuals or private subjects." This book was widely recognized by the Founding Fathers, such as James Madison. He described Blackstone's work at the time as "a book which is in every man's hand." Blackstone's private category contained crimes such as murder, burglary, and arson. In the public category, however, he cataloged crimes that could be understood as an assault upon the state. Within a sub-

category denominated "offenses against public justice," Blackstone included the crimes of perjury and bribery. In fact, in his catalog of public justice offenses, Blackstone placed perjury and bribery side by side.

When you read the impeachment clause in the Constitution, article II, section 4, "The President, Vice President and all Civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors," what did they mean when they thought "other high crimes"? I submit to you that perjury and obstruction of justice fits in this category of "other high crimes." Perjury and bribery are side by side.

If, when William Jefferson Clinton sat at the table in the civil deposition in the Jones v. Clinton case and, as alleged in the record, perjured himself, speaking hypothetically, if he had then offered Judge Susan Webber Wright a cash bribe, there would be no question in this body what you must do. But what I am saying unto all of you is that there is no difference here, and that is the pain of this case. There is no difference between a cash bribe or sitting before a Federal judge and perjuring one's self, whether it be in the underlying civil deposition or, in fact, in the grand jury perjury. Perjury and bribery are side by side. Mr. Manager CANADY will develop that further.

The Constitution also recognizes that truth-telling under oath is central to the maintenance of our Republic.

We are all familiar with the Constitution. This is in its handwritten glory. The founders took such pride in the oath that it is mentioned in the Constitution on five separate occasions, not the least of which is the President's own oath to defend the Constitution. Article I, section 3, sets forth the requirement that the Senate be under oath when trying cases of impeachment, and I witnessed as that occurred. Article II, section 1, specifically prescribes the oath which must be taken before our President enters on the execution of his office.

The right against self-incrimination under the Constitution derives in some measure from the Republic's interest in preserving the truth-telling oath. Forced testimony is forbidden because it might lead many to violate their most solemn obligations and, over time, weaken the essential civic norm of the fidelity to that oath—fidelity.

The framers took the significance of the oath very, very seriously. The crime of perjury was among the few offenses that the first Congress outlawed by statute as they met, and that affirms the framers' view of the seriousness. In 1790, in a statute entitled "An Act for the Punishment of Certain Crimes Against the United States," Congress made the crime of perjury punishable by imprisonment of up to 3 years, a fine of up to $800, disqualification from giving future testimony and "stand[ing] in the pillory for one hour." Today, we don't force individuals convicted of perjury to stand in the pillory for up to 1 hour.

Today, perjury is punishable by up to 5 years imprisonment in a Federal penitentiary if you perjure yourself in a Federal jurisdiction. Likewise, the Supreme Court has repeatedly noted the extent to which perjury subverts the judicial process and, thus, the rule

of law. For example, in 1976, in a case of United States v. Mandujano, the Supreme Court emphasized:

> Perjured testimony is an obvious and flagrant affront to the basic concepts of judicial proceedings. Effective restraints against this type of egregious offense are, therefore, imperative. Hence, Congress has made the giving of false answers a criminal act punishable by severe penalties. In no other way can criminal conduct be flushed into the open where law can deal with it.

Moreover, it is obvious that any testimony given to a grand jury must be truthful, for the grand jury process is, in fact, the truth-seeking process of our criminal justice system. As the Supreme Court stated in 1911 in the case of Glickstein v. the United States:

> It cannot be conceived that there is power to compel the giving of testimony where no right exists to require that the testimony shall be given under such circumstances and safeguards as to compel it to be truthful.

Indeed, giving false material testimony to a grand jury, perjuring one's self, totally destroys the value of one's testimony and interferes with the ability of a grand jury to accomplish its mission which, again, is to find the truth. Perjury before a grand jury is a crime against our system of Government and the American people, and in the case before us, this is a case of perjury upon perjury.

Before the grand jury, President Clinton testified that the testimony that he gave in the underlying civil case of Jones v. Clinton in a civil deposition, that it was truthful. We submit that that is a lie. So what we have is perjury on perjury.

You may hear the President's lawyers remark that the view of the founders is quaint, not really applicable to these settings today. Let's look at a few very recent examples to see if the view of the seriousness of telling the truth under oath, as envisioned by the Founding Fathers, has changed any here today.

In the case of the United States v. Landi in the Eastern District of Virginia in 1997, the defendant was convicted on two counts of perjury: one for lying in a declaration she made during a civil forfeiture case, and the other for lying to the grand jury in a related criminal investigation. Here is what the judge said in this case:

> . . . the defendant committed perjury on two separate occasions. There can be no question of it being done by mistake, and perjury is perhaps one of the most serious offenses that can be committed against the court itself. And the court does not believe that it's appropriate to consider probation in the case of somebody who's been convicted of perjury.

In a second case, United States v. Vincent Bono in the District of New Hampshire in 1998, the defendant was found guilty of lying before a grand jury in trying to cover his stepson's involvement in a robbery that the grand jury was investigating. Here is what the judge had to say about lying before a grand jury:

> As a [matter of policy], they—

Meaning Congress—

> they don't want people lying to grand juries. They particularly don't want people lying to grand juries about criminal offenses. They particularly don't want people lying to grand juries about criminal offenses that are being investigated. They don't like that. And Congress has said we as a people are going to tell you if you do that, you're going to jail and you're going to jail for a long time. And if you don't get the message, we'll send you to jail again. Maybe others will. But we're not going to have people coming to grand juries and telling lies because of their children or their

mothers or fathers or themselves. It's just not acceptable. The system can't work that way.

In another case in United States v. Ronald Blackley in the District of Columbia in 1998, the defendant was the former chief of staff to the Secretary of the U.S. Department of Agriculture. The defendant was found guilty at trial on three counts of making false statements to the grand jury in connection with his official duties. Here is what the judge had to say in this case:

In my view, providing a false statement under oath is a serious offense. The fact that the proceeding is civil or administrative does not make the crime less serious. We cannot fairly administer any kind of system of justice in this country if we do not penalize those who lie under oath.

The defendant stands before me as a high-ranking Government official convicted of making false statements under oath. This is such a serious crime that it demands an even longer term of imprisonment in this court's view. This court has a duty to send a message to other high-level Government officials that there is a severe penalty to be paid for providing false information under oath. There is a strong reason to deter such conduct and to dispel all of the nonsense that's being publicly discussed and debated about the seriousness of lying under oath by Government officials. A democracy like ours depends on people having trust in our Government and its officials.

There are many other cases, and you can go to your Lexis and Westlaw and research them. These three cases make it very clear that lying under oath is as serious today in the 106th Congress as it was in 1790 in the First Congress when it enacted the perjury statute. The First Congress recognized the seriousness of perjury and its attack on the judicial system.

Now I would like to discuss article II, which is the obstruction of justice, and how it is an attack on our judicial system. In either a criminal or a civil case, obstruction undermines the judicial system's ability to vindicate legal rights. If it is allowed to go unchecked, then the system will become a farce and ultimately a test of which side is better at using underhanded methods. Accordingly, Federal courts have called the Federal obstruction of justice statute "one of the most important laws ever adopted" in that it prevents the "miscarriage of justice."

This is "Black's Law Dictionary." "Black's Law Dictionary" defines "obstruction of justice" as "[i]mpeding or obstructing those who seek justice in a court, or those who have duties or powers of administering justice therein." It is very clear. Not only is obstruction of justice, on its own, a crime in the Federal Code, but, in addition, the Federal Sentencing Guidelines—the Federal Sentencing Guidelines—increase the sentence of a convicted defendant who has "willfully obstructed or impeded, or attempted to obstruct or impede, the administration of justice during the investigation, prosecution, or sentencing" of his offense. The commentary on the Guidelines specifically lists as examples of obstruction actions the House alleges that President Clinton has committed, including "committing, suborning, or attempting to suborn perjury" and "destroying or concealing or directing or procuring another person to destroy or conceal evidence that is material to an official investigation or judicial proceeding. . . ."

Yesterday, you learned from Mr. Manager MCCOLLUM of Florida, when he discussed that that perjury and obstruction of justice is punished more severely in the Federal Sentencing Guidelines than

bribery. As I stated earlier, Blackstone put bribery and perjury side by side.

At a hearing on the background and history of impeachment as part of the House impeachment inquiry, we were privileged to have the testimony of Judge Griffin Bell, an individual who has highly distinguished himself in public service. Judge Bell was appointed to the Federal bench by President John Kennedy, and he served as the U.S. Attorney General under President Carter. Judge Bell said that, "I have thought about this a great deal. This is a serious matter. Trifling with the Federal courts is serious. And I guess I am biased because I used to be a Federal judge. But I cannot imagine that it wouldn't be a serious crime to lie in a Federal grand jury or to lie before a Federal judge, and that is where I come down."

Judge Bell went on to say, "And all the civil rights cases that I was in in the South depended on the integrity of the Federal court and the Federal court orders and people telling the truth and fairness. Truth and fairness are the two essential elements in a justice system, and all of these statutes I mentioned, perjury, tampering with a witness, obstruction of justice, all deal in the interests of truth. If we don't have truth in the judicial process and in the court system in our country, we don't have anything. We don't have a system."

As you can see, according to Judge Bell, "truth and fairness" are the two cornerstones of our judicial system. President Clinton violated both of these bedrock principles.

Finally, Judge Bell spoke to the issue, if a President ever was convicted of a felony. Judge Bell stated:

> If the President were indicted and convicted of a felony, such as perjury or obstruction of justice or witness tampering, before impeachment proceedings began, would anyone argue that he should continue to be President? I don't think so. If the President were subsequently indicted and convicted of a felony, which [Judge Bell believes] the Constitution clearly allows, [he went on to say] would anyone argue that he should continue to be President? I don't think so.

He stated this:

> A President cannot faithfully execute the laws if he himself is breaking them.

Judge Bell hit it right on the head. Judge Bell said:

> A President cannot faithfully execute the laws if he himself is breaking them. The statutes against perjury, obstruction of justice and witness tampering rest on vouchsafing the element of truth in judicial proceedings—civil and criminal—and particularly in the grand jury. Allegations of this kind are grave indeed.

To borrow the words of constitutional scholar Charles J. Cooper:

> The crimes of perjury and obstruction of justice, like the crimes of treason and bribery, are quintessentially offenses against our system of government, visiting injury immediately on society itself, whether or not committed in connection with the exercise of official government powers.

I believe all of you should have these charts at your table.

> In a society governed by the rule of law, perjury and obstruction of justice simply cannot be tolerated because these crimes subvert the very judicial processes on which the rule of law so vitally depends.

It is no exaggeration to say that our Constitution and the American people entrust to the President singular responsibility for the enforcing of the rule of law. Perjury and obstruction of justice strike at the heart of the rule of law. A President who has committed these crimes has plainly and directly violated the most im-

portant executive duty. The core of the President's constitutional responsibilities is his duty to "take Care that the Laws be faithfully executed." And because perjury and obstruction of justice strike at the rule of law itself, it is difficult to imagine crimes that more clearly or directly violate this core Presidential constitutional duty.

When President Clinton had the opportunity to personally uphold the rule of law, to uphold the truth-seeking function of the courts, to uphold the fairness in a judicial proceeding, he failed. Far from taking care that the laws be faithfully executed, if a President is guilty of perjury and obstruction of justice, he has himself faithlessly subverted the very law that the rest of us are called upon to obey.

You may hear arguments that perjury and obstruction don't really have much consequence in this case because it was a private matter and, therefore, not really a serious offense. I would like to arm you with the facts. The courts do not trivialize perjury and obstruction of justice.

According to the U.S. Sentencing Commission, in 1997, 182 Americans were sentenced in Federal court for committing perjury. Also in 1997, 144 Americans were sentenced in Federal court for obstruction and witness tampering.

In State jurisdictions all across the country take the matter very seriously. I have chosen one State, the State of California, which brought 4,318 perjury prosecutions in 1997. There are now at least 115 persons serving sentences for perjury in Federal prisons. Where is the fairness to these Americans if they stay in jail and the President stays in the Oval Office?

If the allegations in the independent counsel's referral were made against a sitting Federal judge, would not the Senate convict? If William Jefferson Clinton were a sitting judge instead of the President, would not the Senate convict? While my colleague, Mr. Manager GRAHAM, will look into this further, let's look briefly at precedent for the moment. When we bring up the issues regarding the impeachment of former Federal judges Mr. Claiborne and Mr. Nixon, one standard was used: high crimes and misdemeanors. The Senate said the one standard that applies to the President and Vice President will also apply to these Federal judges and other civil officers.

In the defense of Judges Claiborne and Nixon, the defense lawyers at the time in the trial in the Senate argued that Federal judges should be treated differently from the President, that they could not be impeached for private misbehavior because it was extrajudicial. The Senate rejected that proposition as incompatible with common sense and the orderly conduct of government. You rejected that argument, the very same argument that we are about to hear, perhaps, from the White House defense team. And I believe this Senate will uphold its precedent, the precedent that Federal judges and the President should be treated by the same standard—impeachment for high crimes and misdemeanors.

Also, do not be tempted to believe the argument that lying under oath about sex doesn't matter, that it is private. I covered that earlier, but I want to bring it to your attention as some of the House managers did yesterday regarding American law. It makes rape a crime, domestic violence a crime, sexual harassment a civil rights

violation, libel, a compensable offense. Without the protections of perjury and obstruction, none of the rights of the victims of such cases could be vindicated. That is why the courts take these matters so seriously.

If the President's lawyers try to tell you that this case is simply about an illicit affair, I believe that it demeans our civil rights laws. If, indeed, the President is successful in trying to make everyone believe that this case is only about an illicit affair, what will the message be from those in this hallowed body who have in the past been passionate advocates of our civil rights laws, whether it be by race, gender, religion, or disability? If the evidence-gathering process is unimportant in Federal civil rights sexual harassment lawsuits—remember, that was the underlying basis of this case—what message does that send to women in America?

There are some important questions we need to ask. Are sexual harassment lawsuits, which were designed to vindicate legitimate and serious civil rights grievances of women across America, now somewhat less important than other civil rights? Which of our civil rights laws will fall next? Will we soon decide that the evidence-gathering process is unimportant with respect to vindicating the rights of the disabled under the Americans with Disabilities Act? Will the evidence-gathering process become unimportant with respect to vindicating the voting rights of those discriminated against based on race or national origin? Who will tell the hundreds of Federal judges across the Nation that the evidence-gathering process in these cases is now unimportant?

Consider postal worker Diane Parker who was convicted of perjury and sentenced to 13 months in prison for making a false material declaration during the discovery deposition in a sexual harassment lawsuit. Judge Lacey Collier said: "One of the most troubling things in our society today is people who raise their hand, take the oath to tell the truth, and then fail to do that. . . . This, I hope, is sufficient punishment for you," the judge stated. The judge went on to say, "But more importantly, I hope that it is a deterrence to others. So your story can be taken far and wide to demonstrate to others the seriousness of the responsibility of telling the truth in court proceedings."

The Senate must now determine whether it is acceptable or whether it is appropriate to set a precedent to have an individual serve as President of the United States when that individual has committed, is alleged to have committed, serious offenses against our system of government while holding that office.

While we have been discussing how perjury and obstruction of justice are attacks on our judicial system, we must recognize how the judicial system is a core function of the government. When Mr. Manager HENRY HYDE speaks of the rule of law protecting us from the knock on the door at 3 a.m., what, exactly, was he referring to? In totalitarian societies, rulers may drag the ruled off to prison at any time for any reason. Our system differs because we require our leaders to go through a judicial procedure before they put someone in prison or otherwise violate their individual rights. The President's offenses assault the administration of this judicial procedure. As such, they constitute an assault on the core function of the government and repudiate our most basic social contract. A core func-

tion of the government derives its role from the social contract that our civilized society has under which the fundamental exchange of rights takes place between those of us as individuals and unto the government.

We give up our individual rights to exercise brute force to settle our personal disputes. That is a situation where chaos reigns and the strongest most often prevails. Instead, we submit to the power delegated to the State under which the individual then submits to the governmental processes as part of the social contract. Indeed, when conflict arises in our society, we as individuals are compelled via the social contract to take disputes to our third branch of government—the courts. The judicial branch then peacefully decides which party is entitled to judgment in their favor after a full presentation of the truthful evidence.

Implicit in the social contract that we enter as a civilized society is the principle that the weak are equally entitled as the strong to equal justice under the law. Despite the tumbling tides of politics, ours is a government of laws, not of men. It was the inspired vision of our Founding Fathers that the judicial, legislative, and executive branch of Government would work together to preserve the rule of law. The U.S. Constitution requires the judicial branch to apply the law equally and fairly to both the weak and the strong.

Once we as a society—and particularly our leaders—no longer submit to the social contract and no longer pay deference to the third branch of Government, which is equally as important as the legislative and executive branches of Government, we then begin to erode the rule of law and begin to erode the social contract of the great American experiment.

That, I believe, is why Judge Bell stated, "A President cannot faithfully execute the laws if he himself is breaking them."

The administration of justice is a core function of the Government precisely because of the importance we place on the fair resolution of disputes and on whom and for how long a person will be denied liberty for violating our criminal laws. Any assault on the administration of justice must be interpreted as a threat to our system of Government. Our President, who is our chief executive and chief law enforcement officer, and who alone is delegated the task under our Constitution to "take care that the laws be faithfully executed," cannot and must not be permitted to engage in such an assault on the administration of justice.

The articles of impeachment adopted by the House of Representatives establish an abuse of public trust and a betrayal of the social contract in that the President is alleged to have repeatedly placed his personal interests above the public interest and violated his constitutional duties. For if he is allowed to escape conviction by the Senate, we would allow the President to set the example for lawlessness. We would allow our President to serve as an example of the erosion of the concept of the social contract embraced and embodied in our Constitution. I don't believe the Senate will allow that to happen.

As you undertake your examination of the facts, the law, and your precedents, the Senate must weigh carefully its judgment, for the consequences are deeply profound, not for the moment but for the ages. Should the Senate choose to acquit, it must be prepared

to accept a lower standard, a bad precedent, and a double standard. However, should the Senate choose to convict, it would be reinforcing high standards for high office, maintaining existing precedents, and upholding the principle of equal justice under the law.

I think it is important to pause here and reflect upon the constitutional duties of the President of the United States. I agree with the defense argument that this has not been alleged as a dereliction of the President's exercise of executive powers. So let me talk about his executive duties.

The President is reposed with a special trust by the American people. The President is a physical embodiment of America and the hope and freedom for which she stands. When the President goes abroad, he is honored as the head of a sovereign nation; our Nation is acknowledged, not just the individual who occupies the Office of the Presidency. When he walks into a room and receives a standing ovation, the ovation is not that of the individual, it is for the Nation he represents.

The President has a constitutional role as Commander in Chief. The President plays a unique and indispensable role in the chain of command. In Federalist 74, Alexander Hamilton stated:

> Of all the cares or concerns of government, the direction of war most peculiarly demands those qualities, which distinguish the exercise of power by a single hand.

It is universally agreed that the President, in his role as Commander in Chief, is not an actual member of the military. However, as the "single hand" that guides the actions of the armed services, it is incumbent that the President exhibit sound, responsible leadership and set a proper example when acting as Commander in Chief.

That leadership is also at the core of the issue before us. In order to be an effective leader, an effective military leader, the President must exhibit the traits that inspire those who must risk their lives at his command. These traits include honor, integrity, and accountability.

Admiral Thomas Moorer, a former Chairman of the Joint Chiefs of Staff, submitted testimony to the House impeachment inquiry. Admiral Moorer stated it this way:

> Military leaders also serve as role models for honorable and virtuous conduct.

Veracity and truthfulness are important components of a leader's character. In order to have the trust of their subordinates, military leaders must have honor and be truthful in all things. That trust, that bond between the leaders and the led, is an essential element of any successful military organization.

The President's own self-inflicted wounds have called his credibility into question. While a President's decisions are always critiqued, a President receives the benefit of the doubt in the decisionmaking process that he always places the interests of the Nation above his own. But by William Jefferson Clinton's present diminished veracity, he has now forfeited that benefit and has invited doubt into the decisionmaking process.

The lack of trust in the President's motives, his veracity and his judgment is inherently corrosive and can only have a detrimental effect on our military credibility overseas. This corrosion is difficult to measure, for it cannot be quantified easily in a readiness report

or training exercise. But in squadbays and wardrooms around the world, and at bases in the United States, there can be heard whispers and conversations of those who know that had they merely been accused of the same offense, their careers would have ended long ago.

This is the intangible effect that the President's actions have had on our military. We cannot ignore the fact that the Commander in Chief's conduct sets a poor example for the men and women in the military. Worse, we cannot ignore the idea that to acquit the President would create a double standard.

The Constitution directs this body to provide advice and consent to the President's nominations for military officers. It is your singular responsibility to set high standards of conduct for these officers, and you have done that. The Senate has in the past—and you will likely again do so in the future—rejected those whose moral and legal misconduct makes them unsuitable to be officers in the military.

Let me indulge in a hypothetical. An officer is nominated by the President for promotion to the rank of major. After the list is submitted, but before the Senate's confirmation, an investigation of the individual's background results in a report that mirrors the allegations in the Office of Independent Counsel's referral. After a very careful review of the Uniform Code of Military Justice, this captain, after having committed similar offenses as are in the Office of Independent Counsel's referral, could be charged with article 105, false swearing, and face up to 3 years; he could be charged in article 107, false official statement, facing up to 5 years; he could be charged with article 131, perjury—probably several times—and face up to 5 years; he could be charged with article 133, conduct unbecoming an officer; he could be charged with article 134, prevent seizure of property, and face up to 1 year imprisonment; he could be charged with article 134, soliciting another to commit an offense, with a penalty of up to 5 years; he could be charged with article 134, subornation of perjury, and face confinement up to 5 years; he could be charged with article 134 again, obstructing justice, and face 5 years. I could probably come up with about four others, but I won't get into the salacious details.

Needless to say, the Senate would insist on this hypothetical officer's removal from the promotion list. You would do that. The Service would certainly relieve him of his duties.

In every warship, every squadbay, and every headquarters building throughout the U.S. military, those of you who have traveled to military bases have seen the picture of the Commander in Chief that hangs in the apex of the pyramid that is the military chain of command.

You should also know that all over the world military personnel look at the current picture and know that, if accused of the same offenses as their Commander in Chief, they would no longer be deserving of the privilege of serving in the military.

Some would say that what I just talked about doesn't matter—that in the military they live under different standards—they live under these high standards. They say words like "duty," "honor," "country." They are instilled with core values and core virtues—that really doesn't matter in this case—that the President really

doesn't have to follow those types of high standards—that it elevates some form of high standards, if he stands accused of high crimes—it really is not high crimes; it was about a private matter—that they don't rise to the level needed to remove the President from office.

I remind you of Gen. Douglas MacArthur. In his farewell address at West Point, Gen. Douglas MacArthur stated, when he referenced the words I spoke of, "duty" and "honor" and "country," and the high principles:

> The unbelievers will say they are but words, but a slogan, but a flamboyant phrase. Every pedant, every demagogue, every cynic, every hypocrite, every troublemaker, and I am sorry to say, some others of an entirely different character, will try to downgrade them to the extent of mockery and ridicule.

The ideal object must be held high even though we recognize that as humans we are not perfect. No matter how great we aspire, we are human and we will occasionally fail. But there must be the pursuit of such high ideals. We cannot degrade our standards as a people. By a conviction in the Senate of the President of the United States you will be upholding a high and lofty standard, not only for America, but in particular for those military leaders, rather than setting low standards for the President and a high lofty standard for military leaders.

Let me turn to the President's responsibility to see that "the laws are faithfully executed." According to scholar Philip B. Kurland, it was probably George Washington rather than the Constitution who is responsible for our hierarchy of Cabinet officers that has been taken for granted over the years. And we have heard of the President as the chief law enforcement officer of the land, and we can find it in the Constitution. So we have to give credit to George Washington and how he put together the Cabinet. And we have accepted it over time. It has been accepted by custom, practice, and legislation that the executive branch is an entity for which the President is responsible both to Congress and to the public.

Mr. Kurland stated:

> The whole of the executive branch acts subordinately to the command of the President in the administration of Federal laws, so long as they act within the terms of those laws. Their offices confer no right to violate the laws, whether they take the form of constitution, statute, or treaty.

The President's Departments of Treasury and Justice seek to bring to account those who disturb our "domestic tranquility," those who seek to disturb our "domestic tranquility," whether they be the drugpushers or unabombers, gangsters, mobsters, church arsonists, violators of individual rights. Dedicated men and women of the FBI, DEA, Customs, Secret Service, BATF, INS, and the U.S. Marshals Office pursue them methodically, thoughtfully, firmly, doggedly, applying the law while risking their lives to uphold the rule of law for our peace and security. They seek to ensure equal justice under the law for everyone.

In the book, "The Imperial Presidency," Professor Arthur Schlesinger, Jr. states:

> The continuation of a lawbreaker as chief magistrate would be a strange way to exemplify law and order at home or to demonstrate American probity before the world.

By a conviction, the Senate will be upholding the high calling of law enforcement in protecting the rule of law and equal justice under the law.

"Equal justice under law"—that principle so embodies the American constitutional order that we have carved it in stone on the front of the Supreme Court building right across the street. The carving across the street shines like a beacon from the highest sanctum on those of us in the Capitol, the home of the legislative branch, and it shines right down Pennsylvania Avenue to the White House, the home of the executive branch. It illuminates our national life and reminds those other branches that despite the tumbling tides of politics, ours is a government of laws and not of men. It was the inspired vision of our founders and framers, again, that the judicial, legislative, and executive branches would work together to preserve the rule of law.

But "equal justice under law" amounts for much more than a stone carving. Although we can't see it or hear it, this living, breathing force has very real consequences in the lives of every citizen every day in America. It allows Americans to claim the assistance of the government when someone has wronged us—even if the person is stronger or wealthier or more popular than we are. In America, unlike other countries, when an average citizen sues the Chief Executive of our Nation, they stand equal before the bar of justice. The Constitution requires the judicial branch of our Government to apply the law equally to both. That is the living consequence of "equal justice under law" that shines brightly across our country.

The President of the United States must work with the judicial and the legislative branches to sustain that force. He is the temporary trustee of that office. But, unfortunately and sadly, William Jefferson Clinton worked to defeat it and to bring darkness upon that grand illumination. When he stood before the bar of justice, he acted without authority to award himself. Even if he believed in his heart that the case against him was politically motivated, he simply assumed unto himself that he had by virtue of his power special privileges that he could be clever, create his own definitions of words in his own mind—create what C.S. Lewis called "verbicide." He murdered the plain spoken English language so he could come up with these definitions in his own mind, state them, and then say, "Well, I never committed perjury because this is what I meant by this word," even though it fails the reasonableness test, and it is absurd that no one would believe his own definitions. He assumed these special privileges, and then lied and obstructed justice to gain advantage in a Federal civil rights action in the U.S. District Court for the Eastern District of Arkansas. And he did so then again when a Federal grand jury began to investigate that lawlessness. And he did it before the grand jury in the U.S. District Court for the District of Columbia. His resistance brings us to this most unfortunate juncture for which you sit in judgment.

So "equal justice under law" lies at the heart of this matter. It rests on three essential pillars: an impartial judiciary, an ethical bar, and a sacred oath. If litigants profane the sanctity of the oath, "equal justice under law" loses its protective force.

The House, as does the Senate, has the responsibility to uphold the Constitution. We have all taken our oaths to defend the Constitution. The Founding Fathers created a system of checks and balances, a system of accountability between the functions of Government. I believe, as I am sure you do, that the Founding Fathers knew the nature of the human heart. Sometimes, as much as we try, we fail, in that the human heart does in fact struggle at times between good and evil. We recognize that no person has perfect virtue and that we each have our human failings. And the founders could foresee a time when corruption could invade the institutions of Government, and they provided the means to address it. The impeachment proceeding is one such means. We are seeking to defend the rule of law.

America, again, is a government of laws, not of men. What protects us from that knock on the door in the middle of the night is the law. What ensures the rights of the weak and the powerless against the powerful is the law. What provides the rights to the poor against the rich is the law. What upholds the rightness of the minority view against the popular but wrong is the law. As former President Andrew Jackson wrote, "The great can protect themselves, but the poor and the humble require the arm and shield of the law."

When our Nation began its journey in history over 200 years ago, the United States was nearly unique in depending on the rule of law as opposed to, at that time, the rule of kings and czars and chieftains and monarchs. Now that our unique, grand American experiment has proved unto the rest of the world a success, others now seek to follow us. They seek to follow. And we have seen in the crumbling of the Soviet Union that the former Soviet nations, now infant republics, look and turn to us. They turn to us, a government ruled by law.

For the sake of ourselves and the sake of generations yet unborn, we, and in particular you who sit in judgment in the Senate, must preserve the rule of law.

I will leave you with the words of the first President of the Senate and the second President of our Nation, John Adams. He said:

> Facts are stubborn things; and whatever may be our wishes, our inclinations, or the dictates of our passions, they cannot alter the state of facts and evidence.

I believe John Adams was right. Facts and evidence. Facts are stubborn things. You can color the facts. You can shade the facts. You can misrepresent the facts. You can hide the facts. But the truthful facts are stubborn; they won't go away. Like the telltale heart, they keep pounding, and they keep coming, and they won't go away. What is also stubborn are the precedents of the Senate.

I will now yield the floor for Manager GRAHAM of South Carolina to discuss the precedents of the Senate.

Mr. LOTT addressed the Chair.

The CHIEF JUSTICE. The Chair recognizes the majority leader.

RECESS

Mr. LOTT. I sense the need for a 10-minute break, but, I say to my colleagues, please tend to your business and return promptly so that we can get started with the proper decorum.

There being no objection, at 11:15 a.m., the Senate recessed until 11:29 a.m.; whereupon, the Senate reassembled when called to order by the Chief Justice.

The CHIEF JUSTICE. The Chair recognizes the majority leader.

Mr. LOTT. Mr. Chief Justice, I believe we are ready to begin with Manager GRAHAM. I have been asked about any changes in the schedule. It depends on how things move forward. I will ask for consent to change it, depending on how things developed from this point, Mr. Chief Justice.

I yield the floor.

The CHIEF JUSTICE. The Chair recognizes Mr. Manager GRAHAM.

Mr. Manager GRAHAM. Thank you, Mr. Chief Justice. I think I broke the code there. When I hear stomachs growling, I know it will be time to wrap this up.

This is an unbelievable occasion for all of us. I am LINDSEY GRAHAM from South Carolina. We talk about civil rights. I am a child of the South and I will give you my views on civil rights and how we progressed in this country, but I am going to talk to you a bit about some decisions this body has made regarding the crime of perjury and obstruction of justice and the impeachment clause in the Constitution as it applies to Federal judges. I am not so presumptuous to tell you I know more about what you did than you did. I am going to try to highlight some of the things that you did that I think served this country well in this area. But before we get there, a couple of observations.

As I was walking over through the Rotunda today, there was a group of Japanese tourists there, and I stopped and talked. My dad, who is now deceased, was a World War II veteran, and it struck me, 50 years plus, how resilient this world is. My dad's generation I don't think would have ever envisioned 50 years ago that his son, one, would be a Congressman, which is a great thing about this country, and two, would be stopping and talking to Japanese tourists in the Capitol of the United States.

So when we talk about the consequences of this case, no matter what you decide, in my opinion, this country will survive. If you acquit the President, we will survive. If you convict him, it will be traumatic, and if you remove him, it will be traumatic, but we will survive.

This has been billed as a constitutional drama, by some of the pundits, that is called a snoozer. I can understand that a little bit. I am the 12th lawyer you have had to listen to, and I think my colleagues have done a very good job. But it is a very long and tedious process in many ways. It is hard to sit here and listen to 12 lawyers talk to you. But you have done a wonderful job, I think. I am very proud of the U.S. Senate. You have paid great attention.

But the fact that people call this boring is not a bad thing to me. I think it shows the confidence we have achieved in 200 years as a Republic that people can go on about their business, and they are upset. I know my phone rings a lot, and your phone rings a lot, about what to do. But there is a calmness in this country in the midst of something so important like this that tells me we have done it right for a long time.

How many countries would love the chance to be bored when their government is in action? How many countries fear that the government won't work for them; that to get it right, you have to pick up a gun? That happens every day throughout this world. And the fact that we can come together and talk about something so important and the country can go on and people not be so anxious about their personal lives and their freedoms and their properties and their jobs is a compliment to every generation that has ever served this Republic.

Tom Brokaw has a book out called "The Greatest Generation," and I recommend you read it because we will be talking about that in a moment. But let's talk about some of this country's imperfections. Mr. BUYER talked very eloquently about the rule of law and how it makes us so different and how it is something that people literally do die for and have died for.

But let me tell you, as a lawyer, it is not a perfect legal system. If you are a poor person and you are charged with a crime, you are likely to get a public defender right out of law school and, hopefully, that public defender will do the best he can or she can. But it is not a perfect system. Don't ever think it is.

Civil rights have been advanced a lot in my lifetime, but we have a long way to go in South Carolina. I think we have a long way to go in this Nation. In my lifetime, I started school with no black person in my class. By the sixth grade—I think it was the sixth grade—integration hit in my area, and I can remember my mom and dad being scared to death about what it would do and what it would mean. But we made it, and we are better off as a country.

We are here to judge our President. We are here to say whether or not he is guilty, to begin with, of some serious offenses that are colored by sex, and there is absolutely no way to get around that, and I know it is uncomfortable to listen to.

My father and mother owned a restaurant, a beer joint, I guess is what we would say in South Carolina. I can remember that if you were black, you came and you had to buy the beer and you had to go because you couldn't drink it there. That is just the way it was, is what my dad said. I always never quite understood that. My dad and mom were good people, but that is just the way it was. That is not the way it is now, and we are better off for that.

Sexual harassment cases are always uncomfortable to listen to. That is just the way it is. It used to be in this country, not long ago, there was really no recourse if you were sexually harassed. We have changed things for the better.

The reason we are here today is not because somebody wanted to look into the personal life of the President for no good reason. We are here today because somebody accused him when he was Governor of picking her out of a crowd, asking her to come to a hotel room, and, if you believe her, did something very crude and rude that you wouldn't want to happen to anybody in your family. Only God knows what happened there. That case has been settled. The parties know and God knows. We will never know.

Let me just say this. I am proud of my country where a low-level employee can sue the Governor of their State and, if that Governor becomes President, they can still sue.

The Supreme Court said 9 to 0—a shutout legally—"Mr. President, you will stand subject to this suit." We are going to talk about, is this private or public conduct, does this go to the heart of being President, or is this just some private matter for which he could be prosecuted after he gets out of office? Is this really a big deal about being President?

I contend, ladies and gentlemen of the Senate, it became a big deal about being President when he raised the defense: "You can't sue me now because I am the President, I am a busy man, I have a lot going on." He used his office, or tried to, to avoid the day in court, but the Supreme Court said, "No, sir, you will stand subject to suit under some reasonable accommodation." And we are here today.

If I had been on the Supreme Court, I don't know if I would have ruled that way. There is not much chance of that happening any time soon, if you are worried about that. I don't think that is going to be in my future. [Laughter.]

I may not have ruled that way, and we in Congress, if we don't like the way all this has come out, can change that law, we can change that ruling by law. But it is the law of the land, because the Chief Justice and his colleagues said so.

What did our President do? He tried to say, "You can't sue me because I am President." He participated in that lawsuit because he was told to, and I would argue, ladies and gentlemen, that we all assumed he would play fair. Now isn't there a lot of doubt about that?

Ladies and gentlemen of the Senate, what if he had not shown up? What if he refused to answer any court order? What if he had said, "I am not going to play, that is it; I am not going to listen to you, judicial branch"? You know the remedy to resolve problems like that when Presidential conduct gets out of bounds. Do you know where that remedy lies? It lies with us, the U.S. Congress. When a President gets out of bounds and doesn't do as he or she should do constitutionally—and I would argue that every President and every citizen has a constitutional duty not to cheat another citizen, especially the President—and they get out of bounds, it is up to us to put them back in bounds or declare it illegal.

And how do we do that? How do we regulate Presidential misconduct when it is done in a Presidential fashion? Through the laws and powers of impeachment. That is why we are here today.

It is going to take team work on our part to get this right, because I will argue to you in a moment that the President of the United States, through his conduct, flouted judicial authority and decisionmaking over him. When he chose to lie, when he chose to manipulate the evidence to witnesses against him and get his friends to lie for him, he, in fact, I think, vetoed that decision.

It's worse than if he had not shown up at all. Is that out of bounds? That is what we are going to be talking about today. And we have some guidance as to what really is in or out of bounds for high Government officials. What is a high crime? How about if an important person hurts somebody of low means? It is not very scholarly, but I think it is the truth. I think that is what they meant by "high crimes." It doesn't have to be a crime. It is just

when you start using your office and you are acting in a way that hurts people, you have committed a high crime.

When you decide that a course of conduct meets the high crimes standard under our Constitution for the President, what are we doing to the Presidency? I think we are putting a burden on the Presidency. And you should consider it that way, that if you determine the conduct and the crimes in this case are high crimes, you need to do so knowing that you are placing a burden on every future occupant of that office and the office itself. So do so cautiously, because one branch of the Government should never put a burden on another branch of the Government that is not fair and they can't bear.

Ladies and gentlemen of the Senate, if you decide from the conduct of this President that henceforth any officeholder who occupies the office of President will have this burden to bear—let me tell you what it is: don't lie under oath to a Federal grand jury when many in the country are begging you not to—can the occupant bear that burden?

I voted against article 2 in the House, which was the deposition perjury allegations against the President standing alone. I think many of us may have thought that he didn't know about the tapes, that he and Ms. Lewinsky thought they had a story that was going to work, and he got caught off guard, and he started telling a bunch of lies that maybe I would have lied about, maybe you would have lied about, because it is personal to have to talk about intimate things; and our human nature is to protect ourselves, our family; that is just human nature.

But, ladies and gentlemen, what he stands charged of in this Senate happened 8 months later, after some Members of this body said, "Mr. President, square yourself by the law. Mr. President, if you go into that Federal grand jury and you lie again, you're risking your Presidency." People in this body said that. Legal commentators said that. Professor Dershowitz and I probably don't agree on a lot. I think he would probably agree with that statement. That would be one thing on which we would agree. He said—and he is a very smart, passionate man; and I like passionate people even if I don't agree with them—even he said that if you go to a grand jury and you lie as President, that ought to be a high crime.

So within the context in which you are going to decide this case, you have to understand human failings, because if you don't do that, you are not being fair. And I know you want to be fair.

Human failings exist in all of us. Only when it gets to be so premeditated, so calculated, so much "my interest over anybody else" or "the public be damned," should you really, really start getting serious about what to do. That happened in August, in my opinion, ladies and gentlemen. After being begged not to lie to the grand jury and end this matter, he chose to lie.

That is the burden you will be placing on the next President: "Don't do that. Don't lie under oath when you are a defendant in a lawsuit against an average citizen. Have the courage to apply the law in a fair manner to yourself."

Mr. BUYER talked about values and courage. Let me say something about President Clinton that I believe. I believe he does em-

brace civil rights for our citizens. I believe he has been an articulate spokesman for the civil rights for our citizens. I believe that may be one of the hallmarks of his Presidency. And I am not here to tell you that he doesn't. I am here to tell you that when it was his case, when those rights had to be applied to him, he failed miserably.

It is always easy to talk about what other people ought to do. The test of character is the way you judge people with whom you disagree: Don't cheat in a lawsuit by manipulating the testimony of others. Don't send public officials and friends to tell your lies before a Federal grand jury to avoid your legal responsibilities. Don't put your legal and political interests ahead of the rule of law and common decency.

If you find that these are high crimes, that is the burden you are placing on the next officeholder. If they can't meet that burden, this country has a serious problem. I don't want my country to be the country of great equivocators and compartmentalizers for the next century. And that is what this case is about, equivocation and compartmentalizing.

What I have described to you as the conduct of the President being a high crime I think is just his job description. We are asking no more of him than to be the chief law enforcement officer of the land—follow your job description. A determination that this conduct is a high crime is no burden that cannot be borne in a reasonable fashion by future occupants.

Why did I talk about constitutional teamwork? I am a child of the South. The civil rights litigation in matters that came about in the sixties was threefold: There was legislation passed in Congress, there were judicial decisions that were rendered, and the executive branch came in to help out. Remember when Governor Wallace was standing in the door of the University of Alabama? Remember how he was told to step aside?

What went on? It was a constitutional dance of magnificent proportions. You had litigation that was resolved for the individual citizen so they could go in and acquire the rights, full benefits, of a citizen of that State; you had legislation coming out of this body; and you had defiance against the Federal Government from the State level; and you had the President and the executive branch federalizing the National Guard. And, "Governor Wallace, step aside."

It was 9–0 that Bill Clinton had to be a participant in the lawsuit, and he chose to cheat in every manner you can cheat in a lawsuit. His conduct needs to be regulated, and it needs to be brought to bear under the Constitution. If you put him in jail after his office, that would not solve the constitutional problem he created. The constitutional conduct exhibited by the Executive, when he was told by the judicial branch, "You've got to participate in a lawsuit," was so far afield of what is fair, what is decent, that it became a high crime, and it happened to be against a little person.

The Senate has spoken before about perjury and obstruction of justice and how it applies to high Government officials. And those Government officials were judges.

Before we start this analysis, it is important to know—and some of you know this better than I will ever hope to know the history

of this Senate, the history of this body and how it works and why it works—that when a judge is impeached in the United States of America, the same legal standard—treason, bribery, or other high crimes and misdemeanors—is applied to that judge's conduct as it is to any high official, just like the President. So we are comparing apples to apples.

In Judge Claiborne's trial, they seized upon the language, "Judges shall hold their office during good behavior." And the defense was trying to say, unlike the President and other Government officials, high Government officials, the impeachment standard for judges is "good behavior." That is the term. It's a different impeachment standard. You know these cases better than I know these cases, and you said, "Wrong." The good behavior standard doesn't apply to why you will be removed. It is just a reference to how long you will have your job.

Our President can serve for two terms. A judge serves for life, conditioned on good behavior. What gets you out of office is whether or not you violate the constitutional standard for impeachment, which is treason, bribery, or other high crimes and misdemeanors.

So as I talk to you about these cases and what you as a body did, understand we are using the same legal standard, not because I said so, but because you said so. Judge Claiborne was convicted and removed from office by the Senate 90–7. For what? Filing a false income tax return under penalties of perjury. One thing they said in that case was, "I'm a judge and filing false income tax returns has nothing to do with me being a judge and I ought not lose my job unless you can show me or prove that I did something wrong as a judge." They were saying cheating on taxes has nothing to do with being a judge.

Do you know what the Senate said? It has everything to do with being a judge. And the reason you said that is because you didn't buy into this idea that the only way you can lose your job as a high Government official under the Constitution is to engage in some type of public conduct directly related to what you do every day. You took a little broader view, and I am certainly glad you did, because this is not a country of high officials who are technicians. This is a country based on character, this is a country based on having to set a standard that others will follow.

This is Manager Fish:

> Judge Claiborne's actions raise fundamental questions about public confidence in, and the public's perception of, the Federal court system. They serve to undermine the confidence of the American people in our judicial system . . . Judge Claiborne is more than a mere embarrassment. He is a disgrace—an affront—to the judicial office and to the judicial branch he was appointed to serve.

That is very strong language. Apparently, you agreed with that concept because 90 of you voted to throw him out. What did he do? He cheated on his taxes by making false statements under oath.

Now we will talk more about public versus private. Senator Mathias, about this idea of public versus private:

> It is my opinion . . . that the impeachment power is not as narrow as Judge Claiborne suggests. There is neither historical nor logical reason to believe that Framers of the Constitution sought to prohibit the House from impeaching . . . an officer of the United States who had committed treason or bribery or any other high crime or misdemeanor which is a serious offense against the government of the United States and which indicates that the official is unfit to exercise public responsibil-

ities, but which is an offense which is technically unrelated to the officer's particular job responsibilities."

This hits it head on:

Impeachable conduct does not have to occur in the course of the performance of an officer's official duties. Evidence of misconduct, misbehavior, high crimes, and misdemeanors can be justified upon one's private dealings as well as one's exercise of public office. That, of course, is the situation in this case.

It would be absurd to conclude that a judge who had committed murder, mayhem, rape or perhaps espionage in his private life, could not be removed from office by the U.S. Senate.

The point you made so well was that we are not buying this. If you are a Federal judge and you cheat on your taxes and you lie under oath—it is true that it had nothing to do with your courtroom in a technical sense, but you are going to be judging others and they are going to come before you with their fate in your hands, and we don't want somebody like you running a courtroom because people won't trust the results.

Judge Walter Nixon, convicted and removed from office for what? Perjury before a grand jury. What was that about? He tried to fix a case for a business partner's son in State court. He went to the prosecutor who was in State court and tried to fix the case. When they investigated the matter, he lied about meeting with the prosecutor. He lied about doing anything related to trying to manipulate the results. He was convicted and he was thrown out of office by the U.S. Senate.

I guess you could say, what has that got to do with being a Federal judge? It wasn't even in his court. It has everything to do with being a high public official because if he stays in office, what signal are you sending to anybody else sent to his courtroom or anybody else's courtroom?

The question becomes, if a Federal judge can be thrown out of office for lying and trying to fix a friend's son's case, can the President of the United States be removed from office for trying to fix his case? That is not a scholarly work but that is what happened. He tried to fix his case. He tried to turn the judicial system upside down, every way but loose. He sent his friends to lie for him. He lied for himself. Any time any relevant question came up, instead of taking the honorable way out, he lied and dug a hole, and we are all here today because of that.

I am not going to go over the facts again because you have been bombarded with the facts. If you believe he committed perjury and if you believe he obstructed justice, the reason he did it was to fix his case. And you have some records to rely upon to see what you should do with somebody like that.

Judge Hastings: This Federal judge was convicted and removed from office by the U.S. Senate. But do you know what is interesting about this case to me? He was acquitted before he got here. He was accused of conspiring with another person to take money to fix results in his own court. He gave testimony on his own behavior. The conspirator was convicted but he was acquitted.

Do you know what the U.S. Senate and House said? We believe your conduct is out of bounds and we are not bound by that acquittal. We want to get to the truth, and we don't want Federal judges about whom we have a strong suspicion or reasonable belief are trying to fix cases in their court.

The point I am trying to make is you don't even have to be convicted of a crime to lose your job in this constitutional Republic if this body determines that your conduct as a public official is clearly out of bounds in your role. Thank God you did that, because impeachment is not about punishment. Impeachment is about cleansing the office. Impeachment is about restoring honor and integrity to the office. The remedy of prosecuting William Jefferson Clinton has no effect on the problem you are facing here today, in my opinion.

Every case was tried before it got here with different results. Two of them were convicted; one of them was acquitted. You had a factual record to go upon. I urge you, ladies and gentlemen of the U.S. Senate, that cannot happen in this case unless we have a trial in the true sense of the word. The evidence is compelling and overwhelming, but it has only been half told. The learned counsel for the President will have their chance, and they are excellent lawyers.

If this were a football game, we would be almost at half time. Please, please wait, because I have sat where they are sitting, dying to say something. I know there are things they want to tell you about what we have said that may put this in a different light. That is coming, and it ought to come.

But there is another thing that you will have to decide: Has the factual record been developed enough that I can acquit with good conscience or that I can convict and remove with good conscience? In these judge cases, there was a full-blown trial. Because we can't prosecute the President criminally, we can't do the things that happened in the judge cases, so we don't have that record. I just submit that to you for your wisdom. None of this matters unless you believe he committed the offense. And I am not going to go over that again.

You know the facts pretty well. If there is any doubt, let's call witnesses and let's develop them fully and leave no doubt on the table, and make sure that history will judge us well. Everybody—the House and the President—will have a fair shot at proving their case, that these high crimes occurred.

I don't believe, ladies and gentlemen, that when you look at the totality of what the President did and prior precedents of the Senate, the fact that he was told by the Supreme Court to go into this litigation matter and he cheated so badly, that you would consider these not to be high crimes. Because you are not placing a burden on this office that the office can't bear, I think that will be resolved, I hope and pray, in a bipartisan fashion.

If we can do nothing else for this country, let us state clearly that this conduct is unacceptable by any President. These are, in fact, high crimes. They go to the core of why we are all here as a Nation and to the rule of law, the rules of litigation. He cheated, and you have to put him back in bounds, remove him. Determining this as a high crime puts it back into bounds.

This is a hard question. I am not going to tell you it is not. I do not want to be where you are sitting. I think the evidence will be persuasive that he is guilty. The logic of your past rulings and just fundamental fairness and decency, and helping the Supreme Court

enforce their rules, if nothing else, will lead you to a high-crime determination.

But we are asking you to remove a popular President. I don't know why all this occurred. And we have a popular President. I know this. The American people are fundamentally fair, and they have an impression about this case from just tons and tons and tons of talk, tons and tons and tons of speaking. One in five, they tell me, are paying close attention to this. The question you must ask is: If every American were required to do what I have to do, sit in silence and listen to the evidence, would it be different? You are their representatives; they will trust you. This is a cynical age, but I am optimistic that whatever you do, this country will get up and go to work the next day, and they will feel good, no matter what it is.

To set aside an election is a very scary thought in a democracy. I do not agree with this President on most major policy initiatives. I did not vote for this President. But he won; he won twice. To undo that election is tough.

Let me give you some of my thoughts. How many times have you had to go to a child, a grandchild, or somebody who works for you, and give them a lecture that goes along the lines: Don't do as I do, do as I say. Isn't that a miserable experience? The problem with keeping this President in office, in my opinion, is that these crimes can't be ignored by anybody who looks at the evidence. They can be explained away, they can be excused; but they have far-reaching consequences for the law. And in his role as chief law enforcement officer of the land, how can we say to our fellow citizens that this will not be 20 months of "don't do as I do, do as I say." What effect will that have? I think it would be devastating.

This case is the butt of a thousand jokes. This case is requiring parents and teachers to sit down and explain what lying is all about. This case is creating confusion. This case is hitting America far harder than America knows it has been hit. It is tempting to let the clock tick, but I suggest to you, ladies and gentlemen of the Senate, if you believe he is a perjurer, that he obstructed justice in a civil rights lawsuit, the question is not, Should he stay? It is, what if he stays? If you believe this President committed perjury before a grand jury when he was begged not to, and people in this body told him, "Don't do it, because your political career is at stake," and if you believe he obstructed justice in a civil rights lawsuit, don't move the bar anymore. We have moved the bar for this case a thousand times.

Remember how you felt when you knew you had a perjurer as a judge, when you knew you had somebody who had fundamentally run over the law they were responsible for upholding. Remember how you felt when you knew that judge was so out of bounds that you could not put him back in court, even though it was unrelated to his court, because you would be doing a disservice to the citizens who would come before him. A judge has a duty to take care of the individuals fairly who come before the court. The President, ladies and gentlemen of the Senate, has a duty to see that the law applies to everyone fairly—a higher duty in the Constitution. You could not live with yourself, knowing that you were going to leave a perjurer as a judge on the bench.

Ladies and gentlemen, as hard as it may be, for the same reasons, cleanse this office. The Vice President will be waiting outside the doors of this Chamber. Our constitutional system is simple and it is genius all at the same time. If that Vice President is asked to come in and assume the mantle of Chief Executive Officer of the land and chief law enforcement officer of the land, it will be tough, it will be painful, but we will survive and we will be better for it.

Thank you.

The CHIEF JUSTICE. The Chair recognizes Mr. Manager CANADY.

Mr. Manager CANADY. Mr. Chief Justice, distinguished counsel, ladies and gentlemen of the Senate, I am Representative CHARLES CANADY of the 12th District of Florida, and I rise now to conclude the argument that my two fellow managers have begun and to address the fundamental question now before the Senate: Do the offenses charged against the President rise to the level of "high crimes and misdemeanors" under the Constitution?

Are these crimes—perjury before a federal grand jury and obstruction of justice—offenses for which the President has properly been impeached by the House of Representatives and for which he may now properly be convicted by the Senate? Or are these serious felony offenses for which a Chief Executive may not constitutionally be called to account by either the House or the Senate?

To properly answer these questions, it must be understood, as my fellow manager Mr. BUYER has argued, that perjury and obstruction of justice are serious offenses against the system of justice. To properly answer these questions, it must also be understood—as my fellow manager Mr. GRAHAM has discussed—that the Senate has already determined that as a serious offense against the system of justice, perjury is proper grounds for removal from office.

There are several additional points that I now ask you to consider as you deliberate on the momentous issue you must decide.

First, I will argue that restricting the impeachment process to crimes involving the abuse of Presidential power is contrary to common sense. This is a key point in this case. The President's defense hinges to a large extent on his claim that the offenses charged against him do not involve official misconduct.

I will then review the history and purpose of the impeachment process to show that its fundamental object is to maintain the supremacy of law against the misconduct of public officials. After reviewing the background of the impeachment process, I will briefly discuss the prevailing views on the seriousness of perjury at the time the Constitution was adopted, and show that perjury and obstruction of justice are akin to bribery in their purpose and effect.

To conclude, I will discuss the proper role of the Senate in exercising the removal power—emphasizing three essential points:

First, that the removal power is designed to preserve, protect, and strengthen our Constitution by setting a standard of conduct for public officers.

Second, that the Senate should not establish a lower standard of integrity for the President than the standard it has already established for Federal judges.

Third, that the Senate should not allow a President who has violated his constitutional duty and oath of office, and made himself a notorious example of lawlessness, to remain in office.

The President's lawyers have argued that the "Constitution requires proof of official misconduct" for impeachment and conviction, and that removal from office is not proper for crimes that do not involve an abuse of the power of office. This view is endorsed by various academics who have signed a letter in support of the President. The Senate must now decide if this is a proper interpretation of the Constitution.

In deciding this question, you should be guided by common sense and good judgment. It is by no means an abstruse and mysterious matter of constitutional law.

Nor is it a new question before the Senate. It has been decided in the recent judicial impeachments which Mr. GRAHAM has discussed. And it is a question which arose 200 years ago in the course of the first impeachment trial conducted by the Senate.

At that trial in January of 1799, as the Senate met in Philadelphia, an argument was made by counsel for the respondent, Senator Blount of Tennessee, that the impeachment power was properly exercised only with respect to "official offenses." Although Senator Blount escaped conviction on other grounds, the response to his claim that only official misconduct could justify impeachment and removal remains noteworthy. Robert Goodloe Harper of South Carolina, one of the House managers—and who, incidentally, subsequently served as a Member of this Senate representing the State of Maryland—refuted that claim by asking a simple question:

"Suppose a Judge of the United States were to commit a theft or perjury; would the learned counsel say that he should not be impeached for it? If so, he must remain in office with all his infamy. . . ."

Two hundred years to the month after Robert Goodloe Harper posed that question to the Senate, a very similar question is before the Senate today. Shall a President—if found guilty of perjury and obstruction of justice—be removed, or must he "remain in office with all his infamy"?

Although a judge who commits crimes may be subjected to criminal penalties and prevented from discharging judicial functions, he can be divested of his office only by impeachment and removal. The tenure of a President will necessarily expire with the passage of time, but most scholars of constitutional law agree that while he remains in office he is immune from the processes of the criminal law. So long as he is President, the only mechanism available to hold him accountable for his crimes is the power of impeachment and removal. Unless that power is exercised, no matter what crime he has committed, he must "remain in office with all his infamy."

The argument of the President's lawyers that no criminal act by the President subjects him to removal from office unless the crime involves the abuse of his power is an argument entailing consequences which—upon a moment's reflection—this body should be unwilling to accept.

Would a President guilty of murder be immune from the constitutional process of impeachment and removal so long as his crime involved no misuse of official power? Would a President

guilty of sexual assault or child molesting remain secure in office because his crime did not involve an abuse of office?

In support of their position, the President's lawyers have vigorously argued that a President who committed tax fraud—a felony offense not involving official misconduct—would not be subject to impeachment and removal. They erroneously cite the decision of the House Judiciary Committee rejecting an article of impeachment against President Nixon for tax fraud. The record of the House proceedings establishes that the tax fraud article against President Nixon was rejected due to insufficient evidence that he was in fact guilty of tax fraud. The House Judiciary Committee never determined that tax fraud by a President would not be grounds for impeachment.

But, leaving aside the inaccurate characterization of the House Judiciary Committee's action, the claim of the President's lawyers that a President could commit tax fraud and remain immune from impeachment and removal is quite telling. It reveals a great deal about the sort of standard they would set for the conduct of the President of the United States.

The claim that tax fraud—a felony—does not rise to the level of a high crime or misdemeanor was, as you have heard, unequivocally rejected by the Senate in 1986 in the case of Judge Harry Claiborne, who was removed from office for filing false income tax returns.

Then-Senator ALBERT GORE, Jr., summarized the judgment of the Senate that Judge Claiborne should be removed from office. The comments of Senator GORE bear repeating:

> It is incumbent upon the Senate to fulfill its constitutional responsibility and strip this man of his title. An individual who has knowingly falsified tax returns has no business receiving a salary derived from the tax dollars of honest citizens.

Of course, the rationale expressed by Senator GORE for the conviction of Judge Claiborne for his criminal tax offenses applies with equal—if not greater—force to similar offenses committed by the President of the United States. Professor Charles Black, Jr., in his essay on the law of impeachment, recognized the appropriate application of these principles to the office of the Presidency. Professor Black said, "A large-scale tax cheat is not a viable chief magistrate."

I respectfully submit to the Senate that the argument of the President's lawyers concerning tax fraud by a President is not a viable argument.

Who can seriously argue that our Constitution requires that a President guilty of crimes such as murder, sexual assault, or tax fraud remain in his office undisturbed? Who is willing to set such a standard for the conduct of the President of the United States? Who can in good conscience accept the consequences for our system of government that would necessarily follow? Could our Constitution possibly contemplate such a result? What other crimes of a President will we be told do not rise to the level of "high crimes and misdemeanors?" These are grave questions that must be addressed by this Senate. The President's defense requires that these questions be asked and answered.

Contrary to the claims of the President's lawyers, there is not a bright line separating official misconduct by a President from other

misconduct of which the President is guilty. Some offenses will involve the direct and affirmative misuse of governmental power. Other offenses may involve a more subtle use of the prestige, status and position of the President to further a course of wrongdoing. There are still other offenses in which a President may not misuse the power of his office, but in which he violates a duty imposed on him under the Constitution.

Such a breach of constitutional duty—even though it does not constitute an affirmative misuse of governmental power—may be a very serious matter. It does violence to the English language to assert that a President who has violated a duty entrusted to him by the Constitution is not guilty of official misconduct. Common sense indicates that official misconduct has indeed occurred whenever a President breaches any of the duties of his office.

As we have been reminded repeatedly, the Constitution imposes on the President the duty to "take care that the laws be faithfully executed." The charges against the President involve multiple violations of that duty. A President who commits a calculated and sustained series of criminal offenses has—by his personal violations of the law—failed in the most immediate, direct, and culpable manner to do his duty under the Constitution.

In their defense of the President, his lawyers, in essence, contend that a President may be removed for misusing governmental power, but not for corruptly interfering with the proper exercise of governmental power. This argument exalts form over substance. It unduly focuses on the manner in which wrongdoing is carried out and neglects to consider the actual impact of that wrongdoing on our system of government. Whether the President misuses the power vested in him as President or wrongfully interferes with the proper exercise of the power vested in other parts of the Government, the result is the same: the due functioning of our system of government is in some respect hindered or defeated.

There is no principled basis for contending that a President who interferes with the proper exercise of governmental power—as he clearly does when he commits perjury and obstruction of justice—is constitutionally less blameworthy than a President who misuses the power of his office. A President who lies to a Federal grand jury in order to impede the investigation of crimes is no less culpable than a President who wrongfully orders a prosecutor to suspend an investigation of crimes that have been committed. The purpose and effect of the personal perjury and of the wrongful official command are the same: the laws of the United States are not properly enforced.

Although neither the Senate nor the House has ever adopted a fixed definition of "high crimes and misdemeanors," there is much in the background and history of the impeachment process that contradicts the narrow view of the removal power advanced by the President's lawyers.

There is no convincing evidence that those who framed and ratified our Constitution intended to limit the impeachment and removal power to acts involving the abuse of official power.

The key phrase defining the offenses for which the President, Vice President and other civil officers of the United States may be removed—"treason, bribery or other high crimes and mis-

demeanors"—simply does not limit the removal power in the way suggested by the President's lawyers.

The truth is as we have heard already today, that treason and bribery may be committed by an official who does not abuse the power of his office in the commission of the offense. A President might, for example, pay a bribe to a judge presiding over a case to which the President is an individual party. Or a judge might commit an act of treason without exercising any of the powers of his office in doing so. By the express terms of the Constitution those offenses would be impeachable. And there is no reason to impose a restriction on the scope of "other high crimes and misdemeanors" that is not imposed on treason and bribery.

Although having a means for the removal of officials guilty of abusing their power was no doubt very much in the minds of the framers, the purpose of the removal power was not restricted to that object.

To properly understand the purpose of the impeachment process under our Constitution, consideration must be given to use of impeachment by the English Parliament. Impeachment in the English system did not require an indictable crime, but the proceeding was nevertheless of a criminal nature: punishment upon conviction could extend to imprisonment and even death. It was a mechanism used by the Parliament to check absolutism and to establish the supremacy of the Parliament. Through impeachment, Parliament acted to curb the abuses of exalted persons who would otherwise have free reign. Impeachment was used by the Parliament to punish a wide range of offenses: misapplication of funds; abuse of official power; neglect of duty; corruption; encroachment on the prerogatives of the Parliament; and giving harmful advice to the Crown. In the English practice, "high crimes and misdemeanors" included all of these.

During the impeachment of Lord Chancellor Macclesfield in 1725, Serjeant Pengelly summed up the purpose of impeachment. It was, he said, for the "punishment of offenses of a public nature which may affect the nation." He went on to say that impeachment was also for use in "instances where the inferior courts have no power to punish the crimes committed by ordinary rules of justice . . . or in cases . . . where the person offending is by his degree raised above the apprehension of danger from a prosecution carried on in the usual course of justice; and whose exalted station requires the united accusation of all the Commons."

In the case of Warren Hastings—which was proceeding at the time the Constitution was framed—Edmund Burke described the impeachment process as ". . . a grave and important proceeding essential to the establishment of the national character for justice and equity."

As the British legal historian Holdsworth has written, the impeachment process was a mechanism in service of the "ideal . . . [of] government in accordance with law." It was a means by which "the greatest ministers of state could be made responsible, like humble officials, to the law." According to Holdsworth:

". . . [T]he greatest services rendered by this procedure to the cause of constitutional government have been, firstly, the establishment of the doctrine of ministerial responsibility to the law, sec-

ondly, its application to all ministers of the crown, and thirdly and consequently the maintenance of the supremacy of the law over all."

Thus the fundamental purpose of the impeachment process in England was "the maintenance of the supremacy of the law over all." Those who were impeached and called to account for "high crimes and misdemeanors" were those who by their conduct threatened to undermine the rule of law.

This English understanding of the purpose of impeachment serves as a backdrop for the work of the Framers of our Constitution. Despite some important differences in the functioning of impeachment in England and the United States, the fundamental purpose of impeachment remained the same: defending the rule of law.

The records of the proceedings of the Constitutional Convention also shed light on the meaning of "high crimes and misdemeanors," and the underlying purpose of the impeachment mechanism. The primary focus of the relevant discussions at the Convention was on the need for some means of removing the President. Early in the proceedings with respect to impeachment, the Committee of the Whole agreed to make the President removable "on impeachment and conviction of malpractice or neglect of duty," although concerns were expressed that impeachment would give the legislative branch undue control over the executive, and violate the separation of powers.

In the course of the proceedings, James Madison stated that "some provision was needed to defend the community against the President if he became corrupt, incapacitated, or perverted his administration into a scheme of peculation or oppression."

Arguing for a means of removing the President, George Mason said, "No point is of more importance than that the right of impeachment should be continued. Shall any man be above Justice? Above all shall that man be above it, who can commit the most extensive injustice?"

Before the Convention settled on the language that was ultimately adopted, a proposal was considered that would have limited impeachable offenses to treason and bribery. An effort was made to broaden this proposal by including "maladministration" as an impeachable offense. Madison objected. He objected that the inclusion of a term as "vague" as maladministration would result in the President having tenure during the pleasure of the Senate. As a compromise, the term "maladministration" was dropped and "high crimes and misdemeanors" was substituted. From this course of proceedings it can reasonably be concluded that poor administration—at least if it does not involve corrupt motives—is not a sufficient ground for impeachment.

In the debate concerning the Constitution in the various state ratification conventions, the grounds for impeachment were with some frequency said to include abuse or betrayal of trust and abuse of power. "Making a bad treaty" was also frequently mentioned as justifying impeachment. At the Virginia Convention, Governor Randolph spoke of "misbehavior" and "dishonesty," and James Madison gave two examples of impeachable conduct: pardoning a

criminal with whom the President was in collusion, and summoning only a few Senators to approve a treaty.

One of the most extensive recorded discussions of impeachment occurred at the North Carolina ratification convention in remarks made by James Iredell. Iredell, who later served as a Justice of the Supreme Court, spoke of the supremacy of the law under the system of government proposed by the Constitution. He said:

> No man has an authority to injure another with impunity. No man is better than his fellow-citizens, nor can pretend to any superiority over the meanest man in the country. If the President does a single act, by which the people are prejudiced, he is punishable himself. . . . If he commits any misdemeanor in office, he is impeachable . . .

Iredell also expressed the view that impeachment may be used only in cases where there is some corrupt motive. He said:

> . . . [W]hen any man is impeached, it must be for an error of the heart, and not of the head. . . . Whatever mistake a man may make, he ought not to be punished for it, nor his posterity rendered infamous. But if a man be a villain, and wilfully abuse his trust, he is to be held up as a public offender, and ignominiously punished. . . . According to these principles, I suppose the only instances in which the President would be liable to impeachment, would be where he had received a bribe, or acted from some corrupt motive or other.

Iredell's comments buttress the view that impeachment is not to be used as a political weapon to resolve differences of policy between the legislative branch and the executive branch. Impeachment is not an appropriate remedy for errors—even serious errors—in the administration of government.

To justify impeachment, there must be "some corrupt motive," a willful "abuse of trust," an "error of the heart." You will note there is nothing in Iredell's comments to suggest that a President who engaged in a corrupt course of conduct by obstructing justice and committing perjury would be immune from impeachment and removal.

Another major discussion of impeachment during the debate over ratification occurs in the Federalist No. 65, to which reference has already been made in those proceedings, where Alexander Hamilton describes the impeachment process as "a method of national inquest into the conduct of public men" and discusses the powers of the Senate "in their judicial character as a court for the trial of impeachments."

Now, before I discuss his views of impeachment, I would like to say a word in defense of Alexander Hamilton—who is a widely acknowledged champion of our Constitution, widely acknowledged as one of the most eloquent expositors and defenders of the Constitution. Unfortunately, the reputation of Hamilton has in recent days been traduced. It is unjust to the memory of this great man to compare his personal sins with the crimes of President Clinton. When Hamilton was questioned about his affair he told the truth. He took responsibility for his conduct. There is no evidence that he ever engaged in acts of corruption. He never lied under oath. He never obstructed justice. Notwithstanding the efforts of his lawyers, President Clinton by no means benefits from a comparison with Hamilton.

In "The Federalist," Hamilton writes of the Senate:

> The subjects of its jurisdiction are those offenses which proceed from the misconduct of public men, or in other words from the abuse or violation of some public

trust. They are of a nature which may with peculiar propriety be denominated political, as they relate chiefly to injuries done immediately to the society itself.

Hamilton recognized that the focus of the impeachment power is on the "misconduct of public men" or the "abuse or violation of some public trust." Impeachment is a remedy against officials for "injuries done . . . to the society itself."

Despite the claims of the President's lawyers, the comments of Hamilton do not support the view that a President can be impeached and removed only for an abuse of power. The "misconduct of public men," and "the abuse or violation of some public trust" to which Hamilton refers are not restricted to offenses involving the misuse of official power. The "misconduct of public men" encompasses a whole range of wrongful deeds committed by those who hold office when those offenses are committed. The "public trust" is violated whenever a public officer breaches any duty he has to the public. "Injuries done . . . to the society itself" similarly may occur as the result of misconduct that does not involve the misuse of the powers of office.

I submit to the Senate that the English precedents, the records of the Constitutional Convention debates, and the general principles set forth by Hamilton, Iredell, and others in the debate over ratification do not provide a definitive list of high crimes and misdemeanors. But they do provide broad guidance concerning the scope of the impeachment power. The theme running through all these background sources is that the impeachment process is designed to provide a remedy for the corrupt and lawless acts of public officials.

Not surprisingly, those who have been on the receiving end of impeachment proceedings have been quick to argue for a restrictive meaning of "high crimes and misdemeanors." President Clinton's lawyers follow in that well-established tradition.

They attempt to minimize the significance of the charges of perjury and obstruction of justice against the President. In essence, they argue that treason and bribery are the prototypical high crimes and misdemeanors, and that the crimes charged against the President are insufficiently similar in both their nature and seriousness to treason and bribery.

But, as the comments of my fellow manager, Mr. BUYER, have made clear, the crimes set forth in the articles of impeachment are indeed serious offenses against our system of justice. They were certainly viewed as serious offenses by those who drafted and ratified the Constitution.

As Mr. BUYER has mentioned, in his discussion of "offenses against the public justice," Sir William Blackstone—whose work James Madison said was in "every man's hand" during the creation of the Constitution—listed the offenses of perjury and bribery side-by-side, immediately after he listed treason. In 1790, the First Congress adopted a statute entitled "An Act for the punishment of certain crimes against the United States" making perjury a crime punishable as a felony. Nothing could be clearer: perjury is a crime against the United States; it is not a private matter.

As Mr. CHABOT noted yesterday, John Jay, the first Chief Justice of the United States, said that "there is no crime more extensively pernicious to Society" than perjury. According to Jay, perjury "dis-

colors and poisons the Streams of Justice, and by substituting Falsehood for Truth, saps the Foundations of personal and public Rights. . . . [I]f oaths should cease to be held sacred, our dearest and most valuable Rights would become insecure." Given this understanding that was current at the time the Constitution was adopted, it is impossible to support the conclusion that perjury and the related offense of obstruction of justice are somehow trivial offenses that do not rise to the same level as the offense of bribery which is enumerated in the Constitution.

Moreover, perjury and obstruction of justice are by their very nature akin to bribery. When the crime of bribery is committed, money is given and received to corruptly alter the course of official action. When justice is obstructed, action is undertaken to corruptly thwart the due administration of justice. When perjury occurs, false testimony is given in order to deceive judges and juries and to prevent the just determination of causes pending in the courts. The fundamental purpose and the fundamental effect of each of these offenses—perjury, obstruction of justice and bribery alike—is to defeat the proper administration of government. They all are crimes of corruption aimed at substituting private advantage for the public interest. They all undermine the integrity of the functions of government.

The use of the impeachment process against misconduct which undermines the integrity of government is a central focus of two reports prepared in 1974 on the background and history of impeachment, and I would humbly bring these reports to your attention. I commend them to you for your consideration. One of the reports was prepared by the staff of the Nixon impeachment inquiry. The other was produced by the Bar of the City of New York. Both of these reports have gained bipartisan respect over the last 25 years for their balanced and judicious approach. They provide a well-informed analysis of the key issues related to impeachments. In doing so they stand in stark contrast to the recent pronouncements by some academics which substitute political opinion for scholarly analysis.

A review of these two important documents from 1974 supports the conclusion that the articles before the Senate set forth compelling grounds for the conviction and removal of President Clinton.

There has been a great deal of comment on the report on "Constitutional Grounds for Presidential Impeachment" prepared in February 1974 by the staff of the Nixon impeachment inquiry. Those who assert that the charges against the President do not rise to the level of "high crimes and misdemeanors" have pulled some phrases from that report out of context to support their position. In fact, the general principles concerning grounds for impeachment and removal set forth in that report indicate that perjury and obstruction of justice are high crimes and misdemeanors.

Consider this key language from the staff report describing the type of conduct which gives rise to the proper use of the impeachment and removal power:

In the report, they said:

The emphasis has been on the significant effects of the conduct—undermining the integrity of office, disregard of constitutional duties and oath of office, arrogation of

power, abuse of the governmental process, adverse impact on the system of government.

The report goes on to state:

Because impeachment of a President is a grave step for the nation, it is to be predicated only upon conduct seriously incompatible with either the constitutional form and principles of our government or the proper performance of constitutional duties of the presidential office.

Perjury and obstruction of justice, I submit to you, clearly "undermine the integrity of office." I ask you, if these offenses do not undermine the integrity of office, what offenses would?

Their unavoidable consequence is to erode respect for the office of the President and to interfere with the integrity of the administration of justice. Such offenses are "seriously incompatible" with the President's "constitutional duties and oath of office," and with the principles of our government establishing the rule of law. Moreover, they are offenses which have a direct and serious "adverse impact on the system of government." Obstruction of justice is by definition an assault on the due administration of justice—which is a core function of our system of government. Perjury has the same purpose and effect.

The second report, to which I have referred, the thoughtful report on "The Law of Presidential Impeachment" prepared by the Association of the Bar of the City of New York in January of 1974 also places a great deal of emphasis on the corrosive impact of presidential misconduct on the integrity of government. The report summarizes the proper basis for impeachment and removal in this way. It says:

It is our conclusion, in summary, that the grounds for impeachment are not limited to or synonymous with crimes. . . . Rather, we believe that acts which undermine the integrity of government are appropriate grounds whether or not they happen to constitute offenses under the general criminal law. In our view, the essential nexus to damaging the integrity of government may be found in acts which constitute corruption in, or flagrant abuse of the powers of, official position. It may also be found in acts which, without directly affecting governmental processes, undermine that degree of public confidence in the probity of executive and judicial officers that is essential to the effectiveness of government in a free society.

Perjury and obstruction of justice—serious felony offenses against the United States—by a President are acts of corruption which without doubt "undermine that degree of public confidence in the probity of the [the President] that is essential to the effectiveness of government in a free society." Such acts are "high crimes and misdemeanors" because they inevitably subvert the respect for law which is essential to the well-being of our constitutional system.

A similar point is made by a contemporary commentator who has argued:

. . . [T]here are certain statutory crimes that, if committed by public officials, reflect such lapses of judgment, such disregard for the welfare of the state, and such lack of respect for the law and the office held that the occupants may be impeached and removed, for lacking the minimal level of integrity and judgment sufficient to discharge the responsibilities of office.

Such a lack of the minimal level of integrity necessary for the proper discharge of the duties of the Presidency is evidenced by the commission of the statutory crimes of perjury and obstruction of justice.

Contrary to the claim that has been made by some, the issue before the Senate is not whether the offenses of this President will destroy our Constitution. We all know that our system of government will not come tumbling down because of the corrupt conduct of William Jefferson Clinton. Our Republic will survive the crimes of this President. No one doubts that. Of course, the same could be said of all the other Federal officials who have been impeached and removed from office. And the same might be said of the crimes—serious as they were—of President Richard Nixon.

But the removal power is not restricted to offenses that would directly destroy our Constitution or system of government. The removal power is not so limited that it can be brought into play only when the immediate destruction of our institutions is threatened.

On the contrary, the removal power should be understood as a positive grant of authority to the Senate to preserve, protect and strengthen our constitutional system against the misconduct of federal officials when that misconduct would subvert, undermine, or weaken the institutions of our government. It is a power that has the positive purpose of maintaining the health and well-being of our system of government.

This power—the awesome power of removal vested in the Senate—carries with it an awesome responsibility. This power imposes on the Senate the responsibility to exercise its judgment in establishing the standards of conduct that are necessary to preserve, protect, and strengthen the Constitution which has served the people of the United States so well for more than two centuries.

Thus, the crucial issue before the Senate is what standard will be set for the conduct of the President of the United States. In this case, the Senate necessarily will establish such a standard. And make no mistake about it: the choice the Senate makes in this case will have consequences reverberating far into the future of our Republic. Will a President who has committed serious offenses against the system of justice be called to account for his crimes, or will his offenses be regarded as of no constitutional consequence? Will a standard be established that such crimes by a President will not be tolerated, or will the standard be that—at least in some cases—a President may "remain in office with all his infamy" after lying under oath and obstructing justice?

Regardless of the choice the Senate makes—whether it acquits or convicts the President—a standard will be established, and that standard will become an important part of our constitutional law of this Nation. The institutions of our Government will either be strengthened or weakened as a result. And if the Senate acquits this President, the conduct of future Presidents will inevitably be affected in ways that we cannot now confidently predict.

I would now like to take a very few minutes to examine some of the other specific arguments that have been made that this is not a proper case for use of the removal power.

Some have suggested that in setting a standard in this case the Senate should be guided by the popularity of the President. It is urged that a popular President—regardless of the offenses he may have committed—should not be removed from office. Such a view finds no support however, in our Constitution. On the contrary, the

framers understood that a popular President might be guilty of crimes requiring his removal from office.

That is why they included the power of impeachment and removal in the Constitution. And that, no doubt, is why they specifically provided that an impeached official who was convicted and removed might also be perpetually disqualified "to hold and enjoy any office of honor, trust, or profit under the United States."

The potential threat posed to our institutions by Presidential misconduct would, in fact, be heightened by the popularity of the offending President. The harmful influence and example of a popular President would pose a far greater danger to the well-being of our Government than the influence and example of an unpopular President.

Moreover, the very framework of our Constitution establishing a representative democracy is at odds with the notion that the institutions of our Government should respond mechanically to the changing tides of public opinion. The Senate, in particular, was designed to act on the basis of the long-term best interests of the Nation rather than short-term political considerations.

When he was tried by the Senate 130 years ago, President Andrew Johnson was overwhelmingly unpopular. If the Senate had used Presidential popularity as a guide in the Johnson case, there is no doubt that he would have been convicted and removed from office. Yet today there is widespread agreement that such action by the Senate would have been an abuse of the constitutional process, and those who refused to use Presidential popularity as their guide are hailed as great statesmen and heroes. Those Senators who then stood against the tide of public sentiment today are revered as champions of constitutional government.

A popular President guilty of high crimes and misdemeanors should no more remain in office than an unpopular President innocent of wrongdoing should be removed from office. Under the standards of the Constitution, popularity is not a sufficient guide.

Nor should the Senate be swayed by the claims that setting a standard adverse to this President will weaken the institution of the Presidency. Describing the role of impeachment under our Constitution, Arthur M. Schlesinger, Jr.—who I will candidly admit takes a different view of the matter today—wisely observed that:

> The genius of impeachment lay in the fact that it could punish the man without punishing the office. For, in the Presidency as elsewhere, power was ambiguous: the power to do good meant also the power to do harm, the power to serve the republic also the power to demean and defile it.

Rather than weakening the Presidency, the removal from office of a President who has violated his constitutional duty and oath of office will reestablish the integrity of the Presidency. Setting a standard against the acts of perjury and obstruction of justice committed by President Clinton will reaffirm the dignity and the honor of the Office of Chief Executive under our Constitution. That will strengthen—not weaken—the institution of the Presidency.

It has even been argued that the impeachment and removal of President Clinton would result in the virtual alteration of our system of government. It is contended that following the constitutional process in this case would move us toward a transformation of our Constitution: a quasi-parliamentary system, with the President

serving at the pleasure of the legislative branch, would replace the framework based on the separation of powers.

I am, frankly, reluctant to dignify this argument by responding to it. President Nixon was driven from office for his crimes under threat of impeachment and removal. The disruption of the framework of our Government did not ensue. President Clinton may be removed from office for his crimes. The constitutional system will remain sound.

Who has so little confidence in the durability of the institutions of our Government that he would allow a President guilty of perjury and obstruction of justice to remain in office simply on the basis of a fanciful and irrational fear of the supposed consequences of his removal?

The Constitution contains wise safeguards against the misuse of the impeachment and removal power. As a practical matter, as we all know, the requirement of a two-thirds vote for conviction virtually ensures that a President will only be removed when a compelling case for removal has been made. And the periodic accountability to the people of Members of both the House and the Senate serves as a check on the improvident use of the impeachment power for unworthy or insubstantial reasons. Those who would abuse the power of impeachment and removal will be deterred by the certain knowledge that they ultimately must answer to the people.

But, of course, the ultimate safeguard against the abuse of this power is in the sober deliberation and sound judgment of the Senate itself. The framers of the Constitution vested the removal power and responsibility in the Senate because, as Hamilton observed, they "thought the Senate the most fit depositary of this important trust." The Senate was, in the view of the framers, uniquely qualified to exercise the "awful discretion, which a court of impeachment must necessarily have." As Hamilton explained:

> Where else, than in the Senate could have been found a tribunal sufficiently dignified, or sufficiently independent? What other body would be likely to feel confidence enough in its own situation, to preserve unawed and uninfluenced the necessary impartiality between an individual accused, and the representatives of the people, his accusers.

Ladies and gentlemen of the Senate, this is the great trust which the Constitution has reposed in you. It is a trust you exercise not only for those who elected you but for all other Americans, including generations yet unborn.

As you carry out this trust, we do not suggest that you hold this President or any President to a standard of perfection. We do not assert that this President or any President be called to account before the Senate for his personal failings or his sins. We will leave the President's sins to his family and to God. Nor do we suggest that this President or any President should be removed from office for offenses that are not serious and grave.

But we do submit that when this President, or any President, has committed serious offenses against the system of justice—offenses involving the stubborn and calculated choice to place personal interest ahead of the public interest—he must not be allowed to act with impunity.

Mr. Manager GRAHAM has reviewed the recent precedents of the Senate, establishing that offenses such as those committed by this President are grounds for removal from office. Those precedents, which were set in the impeachment trials of Federal judges, are rejected as totally irrelevant by the President's lawyers. They urge that a lower standard of integrity be established in this case for the President of the United States than the standard which the Senate has already established for Federal judges.

But the Constitution contains a single standard for the exercise of the impeachment and removal power. You have heard it before, but I will repeat. Article II, section 4, provides:

> The President, Vice President and all civil officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

And there is nothing in the Constitution suggesting that criminal offenses which constitute high crimes and misdemeanors if committed by one Federal official will not be high crimes and misdemeanors if committed by another Federal official. There is nothing in the Constitution to suggest that the President should be especially insulated from the just consequences of his criminal conduct.

Justice Joseph Story warned long ago against countenancing "so absolute a despotism of opinion and practice, which might make that a crime at one time, or in one person, which would be deemed innocent at another time, or in another person."

The Senate should heed the warning of Justice Story and refuse to arbitrarily establish a different standard for judging William Jefferson Clinton than the standard it has imposed already on others brought before the bar of the Senate sitting as a Court of Impeachment.

The Senate has never accepted the view that a separate standard applies to the impeachment and removal of Federal judges. Indeed, the Senate has specifically rejected attempts to establish such a separate standard for judicial officers. Every judge who has been impeached and removed from office has been found guilty of treason, bribery, or other high crimes and misdemeanors.

Contrary to the argument advanced by some, the constitutional provision that judges "shall hold their offices during good Behaviour" does not establish any authority to remove a judge for misconduct other than for those offenses involving treason, bribery, or other high crimes and misdemeanors. Rather than establishing a standard for removal, the "good behavior" clause simply provides for life tenure for all article III judges. To accept the "good behavior" clause, I would caution you to accept it as a separate basis for the removal of Federal judges would pose a serious threat to the independence of the judiciary under our Constitution.

Members of the Senate, the integrity of the administration of justice depends not only on the integrity of judges, but also on the integrity of the President. A President who has committed perjury and obstruction of justice is hardly fit to oversee the enforcement of the laws of the United States. As Professor Jonathan Turley has pointed out:

> As Chief Executive the President stands as the ultimate authority over the Justice Department and the Administration's enforcement policies. It is unclear how

prosecutors can legitimately threaten, let alone prosecute, citizens who have committed perjury or obstruction of justice under circumstances nearly identical to the President's. Such inherent conflict will be even greater in the military cases and the President's role as Commander-in-Chief.

It would indeed be anomalous for the Senate to now hold the President of the United States to a lower standard of integrity than the standard applied to members of the judiciary. There is no sensible constitutional rationale for such a lower standard.

Who could successfully defend the view that in the framework established by our Constitution the integrity of the Chief Executive is of less importance than the integrity of any one of the hundreds of Federal judicial officers? It is the President who appoints Justices of the Supreme Court and all other Federal judges. It is the President who appoints the Attorney General. It is the President who appoints the Director of the Federal Bureau of Investigation. It is the President who has the unreviewable power to grant pardons.

The power of the President far surpasses the power of any other individual under our Constitution. The authority and discretion vested in him under the Constitution and laws is great and wide-ranging. The requirement that he act with integrity and that he be a person of integrity is essential to the integrity of our system of government.

Soon after the adoption of the Constitution, Alexander Hamilton wrote that "an inviolable respect for the Constitution and the Laws" is the "most sacred duty and the greatest source of security in a Republic." Hamilton understood that respect for the Constitution itself grows out of a general respect for the law. And he understood the essential connection between respect for the law and the maintenance of liberty in a Republic. Without respect for the law, the foundation of our Constitution is not secure. Without respect for the law, our freedom is at risk. Thus, according to Hamilton, those who "set examples which undermine or subvert the authority of the laws lead us from freedom to slavery. . . ."

Early in this century, Justice Brandeis spoke of the harm to our system of Government which occurs when officials of the Government act in a lawless manner. Justice Brandeis said:

> Decency, security and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands to the citizens. In a government of laws, existence of the government will be imperilled if it fails to observe the law scrupulously. Our Government is the potent, the omnipresent teacher. For good or ill, it teaches the whole people by its example. Crime is contagious. If the Government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy.

To conclude, I would observe in the case before it now, the Senate must decide if William Jefferson Clinton as President will be "subjected to the same rules of conduct that are commands to the citizens." It is no answer that he may one day after leaving office perhaps be called to account in a criminal court proceeding somewhere. Justice delayed is justice denied. Because he has taken and violated the oath as President, William Jefferson Clinton is answerable for his crimes to the Senate here and now.

Will he as President be vindicated by the Senate in the face of crimes for which other citizens are adjudicated felons and sent to prison? Or will this Senate, acting in accordance with the provi-

sions of the Constitution, bring him as President into submission to the commands of the law? Will the Senate give force to the constitutional provision for impeachment and removal which Justice Story said "compels the chief magistrate, as well as the humblest citizen, to bend to the majesty of the laws"?

"For good or ill" William Jefferson Clinton "teaches the whole people by [his] example" as President. The President is not only the head of Government but also the head of State. As President he has a unique ability to command the attention of the whole Nation. In his words and his deeds he represents the American people and the system of government in a way that no other American can. Great honor and respect accrue to him by virtue of the high office he holds. The influence of his example is far-reaching and profound.

By his conduct, President William Jefferson Clinton has set an example the Senate cannot ignore. By his example he has set a dangerous and subversive standard of conduct. His calculated and stubbornly persistent misconduct while serving as President of the United States has set a pernicious example of lawlessness—an example which by its very nature subverts respect for the law. His perverse example has the inevitable effect of undermining the integrity of both the office of President and the administration of justice.

Ladies and gentlemen of the Senate, I humbly submit to you that his harmful example as President must not stand. The maintenance in office of a President guilty of perjury and obstruction of justice is inconsistent with the maintenance of the rule of law.

In light of the historic purpose of impeachment, the offenses charged against the President demand that the Senate convict and remove him. He must not "remain in office with all his infamy." Our Constitution requires that this President who has shown such disrespect for the truth, such disrespect for the law, and such disrespect for the dignity of his high office be brought to justice for his high crimes and misdemeanors.

Thank you.

The CHIEF JUSTICE. The Chair recognizes the majority leader.

RECESS

Mr. LOTT. Mr. Chief Justice, if there is no objection, I ask unanimous consent that the court of impeachment proceedings stand in recess for one hour. We will return at 2:10 p.m.

There being no objection, at 1:08 p.m., the Senate recessed until 2:11 p.m.; whereupon, the Senate reassembled when called to order by the Chief Justice.

The CHIEF JUSTICE. The Chair recognizes the majority leader.

Mr. LOTT. Mr. Chief Justice, I believe we are ready to proceed now with the next manager. I believe it is Mr. Manager GEKAS.

The CHIEF JUSTICE. The Chair recognizes Mr. Manager GEKAS.

Mr. Manager GEKAS. Mr. Chief Justice, the President's counsel, Members of the House who form our group of managers, and Members of the Senate, we bring you to what now may be the culmination of the work and effort of the managers and of the House of Representatives for, and what is fast closing in to be, your final

consideration. And that is true—the moment of truth is fast approaching.

That moment of truth will swoop down on you at some point in the near future, at which time the millions of words that have been spoken thus far, the thousands of pages of documents, hundreds of exhibits, and dozens of individuals who have been involved in the preparation, annotation, and accumulation of all the data and evidence—all of that will be funneled into that last moment you will have right before you cast that final vote. That is an awesome moment in the history of this Chamber, in the personal history of your own careers in public service, and of your own life, as well, your personal life, your surroundings, your family, all that means anything and everything to you. That moment of truth encompasses all of that in one fell swoop at that final time that is upon us.

We would not have even had to contemplate this, nor would you have had to, if very early on in the factual situation that arose in this case President Clinton had faced his moment of truth. As I pointed out yesterday, that first moment of truth that faced the President in the legal proceedings that were to engulf him at a later point was his answers, the answers that affixed to that first set of interrogatories under oath. The moment of truth was staring him right in the face, and if he would have acknowledged it at that moment, had paid faith and allegiance to that moment, we would not be arguing here today, nor would we have even heard of a possible impeachment inquiry. But the President chose to sweep away that moment of truth that was at hand and proceeded down the course that has led us to this moment.

In the words of our colleagues who made magnificent presentations of the facts and law to you, the words "truth" and "fairness" were some of the strongest and most profound that we heard in various degrees in touching upon various subjects that were important to our presentation. When I heard my colleagues emphasize those words, it dawned on me that the element of fairness is something which I submit to you and certify to you that these managers, the members of the committee who prepared this case, exalted in making certain would apply to their endeavors and to all that we would present to you—fairness.

When the record of the independent counsel, the referral, reached our doorsteps back in September of 1997 and we first read the details and allegations contained therein, we did not, as some people began to accuse and to orate, adopt 100 percent of what the independent counsel said were the allegations and accept them as fact, and then move on and skip from September to this moment, not having used our intellect, our sympathies, our sense of right, our sense of wrong, our sense of fairness, our elements of truth, our experience, our own intellect, and our own consciences. We didn't set all of those aside and take the referral of Kenneth Starr and make that the final moment that precedes your moment of truth. Everyone should know that. But it is not recognized. We have been pilloried many times over the course of these proceedings on the notion that we simply adopted that referral and walked with it into the Senate Chamber.

One thing has to be said right at the outset. When I saw one allegation of the independent counsel that was encompassed around

the question of executive privilege, an allegation that the assertion by President Clinton of executive privilege in the context of all that had transpired in this case constituted an abuse of power, I must tell you that that hit me right between the eyes. I could not, by even just reading it, accept it at face value. From that moment until this, I had serious, grave doubts that we should embark upon a course in which we would somehow denigrate the issue and privilege known as "executive privilege."

As I worried about this and as I moved on through the process, trying to do my duty, along with everyone else, there came a time in the deliberations of our committee, our managers group, that we felt—and we acted on that feeling—that executive privilege is something that is owed to the President, and that we cannot fairly strip that away from him or in any way diminish the power and the usability of executive privilege. We felt that that was a trapping and a power of the Executive, of the President of the United States, which, no matter how it is exerted, or thereafter possibly set aside by the court, which is always a possibility, and history has shown that it has occurred.

Nevertheless, the exertion of it, the assertion of it, the use of it, the feel for it that the President of the United States must have and should have in the first instance, to assert it, should not be a part of our criticism, our projection of this case.

We felt pretty strongly about it, and we took action on that front by deciding among ourselves that one of the proposed articles—and that was bound to reach you if we had not acted as we did—we decided that we were going to remove that from the allegations in any of the articles of impeachment and not refer to it, except in the context in which I am referring to it, which is reporting to you what happened with that particular issue.

We did that in the face of the knowledge that in all our readings, in all our literature, we noted that when President Nixon attempted to use executive privilege, it was soundly criticized, and part of the impeachment process carried his alleged abuse of executive privilege as one of the tenets of that proceeding. And the report shows executive privilege as being ill-used by President Nixon.

But here is the point. The managers and I and every Member of the Senate, every individual who is with us here today reveres the Office of the Presidency. We respect the Office of the Presidency. The Presidency is we. The Presidency is America. The Presidency is the banner under which we all work and live and strive in this Nation. We revere the Presidency. Any innuendo, or any kind of impulse that anyone has to attribute any kind of motivation on the part of these men of honor who have prepared this case for you today on any whim on their part other than to do their constitutional duty should be rebuffed at every conversation, at every meeting, at every writing that will ultimately flow from the proceedings upon which we have embarked. We revere the Presidency. As a matter of fact, when next week we face the prospect of the President of the United States entering the House of Representatives to deliver his State of the Union message, we will greet the President. We will accord him the respect for the office which he holds. He is our President. He occupies the Presidency. And we will honor that. And so should we all.

But we are capable of and must, in the face of the solemn duty that we have, compartmentalize in the purest sense in greeting the President and applauding his entrance into the State of the Union message. As we will accord him that privilege, we do not set aside the impeachment inquiry. We do not set aside the serious charges that are hoisted against him at that juncture, because we will resume the consideration of them in due course. But in the meantime, we compartmentalize ourselves as Americans recognizing that he holds the most powerful, most respected, and most admired office on the face of the globe. That is part of our duty, as it is our duty to impart our knowledge and our work, our theories, and our analysis to the impeachment proceedings which are at hand.

"These are times that try men's souls," someone said. It was not my mother. And it is true. But anyone who can feel that the final votes that will take place on the part of each individual Member of the Senate, that a vote for conviction is based on a distaste for Bill Clinton, hatred of Bill Clinton—that kind of vote for conviction should never be recognized or countenanced, and history will condemn any individual who does that. And if the votes at the last moment, at this moment of truth, are based on an admiration of President Clinton, of friendship with President Clinton, a deep tie to and with the President, on family and community and national matters, a vote of acquittal should not be based on that. But only the Senate and each individual conscience will determine how that final vote is cast.

We cannot account for the friendship or enmity that might exist with and for President Clinton. All we can do is to do the job that was thrust upon us, that was placed in our hands by a statute that this Congress created—that independent counsel statute. The Congress said that we had to listen to the referral, to accept the referral. The Congress said that we must look towards whatever recommendations might be contained in that. It was the Congress, our Congress—many of you who voted for that statute—which mandated that we consider all of this. We did not simply walk around one day and seize upon a moment of deep thought and say: Let's impeach the President; let's find something upon which we can base a full 6 months' inquiry into the President's actions in front of a court.

This was a duty, much as it is your duty to stay here and listen to what I am saying. The duty I have of presenting it to you and speaking to you is born of the same statute and of the same process and of the same constitutional background that we all share.

So it worries me and us that any awkward motivation would be attributed to any one of us or collectively to us. And once you render your vote, I am not going to question whether it was done out of blind loyalty or enmity or friendship with the President; I am going to judge it as an American citizen, a Member of the House of Representatives, a Member of Congress, an interested community leader, and, last but not least, as a pure American citizen eager to do one's duty.

As the moment of truth approaches, there is only one speaker left for us in the Senate Chamber here to contemplate, and that is the summation to be given by the esteemed chairman of our committee. You should know, as we all feel, that the most stringent

duty that he ever performed, the gentleman from Illinois, was to manage the managers. But he did that just as well and as profoundly as he has approached every single facet of this case. For as he sums up, know for a certainty that he brings to the podium our collective thoughts, our collective emotions, our passions for our work and our duty, and with an eye towards serving you, as we serve our constituents, as we serve the Congress, as we serve America. We are 20 minutes closer now to that moment of truth. Keep in mind your own histories, the history of your relationship with your colleagues in the Congress, and above all, the duty to the United States.

Mr. Hyde.

The CHIEF JUSTICE. The Chair recognizes Mr. Manager HYDE.

Mr. Manager HYDE. Mr. Chief Justice, counsel for the President, distinguished Members of the Senate, 136 years ago, at a small military cemetery in Pennsylvania, one of Illinois' most illustrious sons asked a haunting question—whether a nation conceived in liberty and dedicated to the proposition that all men are created equal can long endure. America is an experiment never finished. It is a work in progress. And so that question has to be answered by each generation for itself, just as we will have to answer whether this Nation can long endure.

This controversy began with the fact that the President of the United States took an oath to tell the truth in his testimony before the grand jury, just as he had on two prior occasions sworn a solemn oath to preserve, protect, and defend the Constitution and to faithfully execute the laws of the United States.

One of the most memorable aspects of this proceeding was the solemn occasion wherein every Senator in this Chamber took an oath to do impartial justice under the Constitution.

But I must say, despite massive and relentless efforts to change the subject, the case before you Senators is not about sexual misconduct, infidelity or adultery—those are private acts and none of our business. It is not even a question of lying about sex. The matter before this body is a question of lying under oath. This is a public act.

The matter before you is a question of the willful, premeditated, deliberate corruption of the Nation's system of justice, through perjury and obstruction of justice. These are public acts, and when committed by the chief law enforcement officer of the land, the one who appoints every United States district attorney, every Federal judge, every member of the Supreme Court, the Attorney General—they do become the concern of Congress.

That is why your judgment, respectfully, should rise above politics, above partisanship, above polling data. This case is a test of whether what the Founding Fathers described as "sacred honor" still has meaning in our time: two hundred twenty-two years after those two words—"sacred honor"—were inscribed in our country's birth certificate, our national charter of freedom, our Declaration of Independence.

Every school child in the United States has an intuitive sense of the "sacred honor" that is one of the foundation stones of the American house of freedom. For every day, in every classroom in America, our children and grandchildren pledge allegiance to a nation

"under God." That statement is not a prideful or arrogant claim. It is a statement of humility: all of us, as individuals, stand under the judgment of God, or the transcendent truths by which we hope, finally, to be judged.

So does our country.

The Presidency is an office of trust. Every public office is a public trust, but the Office of President is a very special public trust. The President is the trustee of the national conscience. No one owns the Office of President, the people do. The President is elected by the people and their representatives in the electoral college. And in accepting the burdens of that great office, the President, in his inaugural oath, enters into a covenant—a binding agreement of mutual trust and obligation—with the American people.

Shortly after his election and during his first months in office, President Clinton spoke with some frequency about a "new covenant" in America. In this instance, let us take the President at his word: that his office is a covenant—a solemn pact of mutual trust and obligation—with the American people. Let us take the President seriously when he speaks of covenants: because a covenant is about promise-making and promise-keeping. For it is because the President has defaulted on the promises he made—it is because he has violated the oaths he has sworn—that he has been impeached.

The debate about impeachment during the Constitutional Convention of 1787 makes it clear that the Framers of the Constitution regarded impeachment and removal from office on conviction as a remedy for a fundamental betrayal of trust by the President. The framers had vested the Presidential office with great powers. They knew that those powers could be—and would be—abused if any President were to violate, in a fundamental way, the oath he had sworn to faithfully execute the Nation's laws.

For if the President did so violate his oath of office, the covenant of trust between himself and the American people would be broken.

Today, we see something else: that the fundamental trust between America and the world can be broken, if a Presidential Perjurer represents our country in world affairs. If the President calculatedly and repeatedly violates his oath, if the President breaks the covenant of trust he has made with the American people, he can no longer be trusted. And, because the Executive plays so large a role in representing the country to the world, America can no longer be trusted.

It is often said that we live in an age of increasing interdependence. If that is true, and the evidence for it is all around us, then the future will require an even stronger bond of trust between the President and the Nation because with increasing interdependence comes an increased necessity of trust.

This is one of the basic lessons of life. Parents and children know this. Husbands and wives know it. Teachers and students know it, as do doctors and patients, suppliers and customers, lawyers and clients, clergy and parishioners: the greater the interdependence, the greater the necessity of trust; the greater the interdependence, the greater the imperative of promise-keeping.

Trust, not what James Madison called the "parchment barriers" of laws, is the fundamental bond between the people and their elected representatives, between those who govern and those who

are governed. Trust is the mortar that secures the foundations of the American house of freedom. And the Senate of the United States, sitting in judgment in this impeachment trial, should not ignore, or minimize, or dismiss the fact that the bond of trust has been broken, because the President has violated both his oaths of office and the oath he took before his grand jury testimony.

In recent months, it has often been asked—so what? What is the harm done by this lying under oath, by this perjury? Well, what is an oath? An oath is an asking almighty God to witness to the truth of what you are saying. Truth telling—truth telling is the heart and soul of our justice system.

I think the answer would have been clear to those who once pledged their sacred honor to the cause of liberty. The answer would have been clear to those who crafted the world's most enduring written constitution.

No greater harm can be done than breaking the covenant of trust between the President and the people; among the three branches of our Government; and between the country and the world.

For to break that covenant of trust is to dissolve the mortar that binds the foundation stones of our freedom into a secure and solid edifice. And to break that covenant of trust by violating one's oath is to do grave damage to the rule of law among us.

That none of us is above the law is a bedrock principle of democracy. To erode that bedrock is to risk even further injustice. To erode that bedrock is to subscribe, to a "divine right of kings" theory of governance, in which those who govern are absolved from adhering to the basic moral standards to which the governed are accountable. We must never tolerate one law for the ruler and another for the ruled. If we do, we break faith with our ancestors from Bunker Hill, Lexington and Concord to Flanders Field, Normandy, Iwo Jima, Panmunjom, Saigon and Desert Storm.

Let us be clear: The vote that you are asked to cast is, in the final analysis, a vote about the rule of law.

The rule of law is one of the great achievements of our civilization. For the alternative to the rule of law is the rule of raw power. We here today are the heirs of 3,000 years of history in which humanity slowly, painfully and at great cost, evolved a form of politics in which law, not brute force, is the arbiter of our public destinies.

We are the heirs of the Ten Commandments and the Mosaic law: a moral code for a free people who, having been liberated from bondage, saw in law a means to avoid falling back into the habit of slaves. We are the heirs of Roman law: the first legal system by which peoples of different cultures, languages, races, and religions came to live together in a form of political community. We are the heirs of the Magna Carta, by which the freeman of England began to break the arbitrary and unchecked power of royal absolutism. We are the heirs of a long tradition of parliamentary development, in which the rule of law gradually came to replace royal prerogative as the means for governing a society of free men and women. Yes, we are the heirs of 1776, and of an epic moment in human affairs when the founders of this Republic pledged their lives, fortunes and, yes, their sacred honor, to the defense of the rule of law. We are the heirs of a tragic civil war, which vindicated the rule of law over the appetites of some for owning others. We are the heirs

of the 20th century's great struggles against totalitarianism, in which the rule of law was defended at immense cost against the worst tyrannies in human history. The "rule of law" is no pious aspiration from a civics textbook. The rule of law is what stands between all of us and the arbitrary exercise of power by the state. The rule of law is the safeguard of our liberties. The rule of law is what allows us to live our freedom in ways that honor the freedom of others while strengthening the common good.

Lying under oath is an abuse of freedom. Obstruction of justice is a degradation of law. There are people in prison for just such offenses. What in the world do we say to them about equal justice if we overlook this conduct in the President?

Some may say, as many have said in recent months, that this is to pitch the matter too high. The President's lie, it is said, was about a "trivial matter;" it was a lie to spare embarrassment about misconduct on a "private occasion."

The confusing of what is essentially a private matter, and none of our business, with lying under oath to a court and a grand jury has been only one of the distractions with which we have had to deal.

Senators, as men and women with a serious experience of public affairs, we can all imagine a situation in which a President might shade the truth when a great issue of the national interest or the national security was at stake. We have all been over that terrain. We know the thin ice on which any of us skates when blurring the edges of the truth for what we consider a compelling, demanding public purpose.

Morally serious men and women can imagine circumstances, at the far edge of the morally permissible, when, with the gravest matters of national interest at stake, a President could shade the truth in order to serve the common good. But under oath, for a private pleasure?

In doing this, the Office of President of the United States has been debased and the justice system jeopardized.

In doing this, he has broken his covenant of trust with the American people.

The framers also knew that the Office of President of the United States could be gravely damaged if it continued to be unworthily occupied. That is why they devised the process of impeachment by the House and trial by the Senate. It is, in truth, a direct process. If, on impeachment, the President is convicted, he is removed from office—and the office itself suffers no permanent damage. If, on impeachment, the President is acquitted, the issue is resolved once and for all, and the office is similarly protected from permanent damage.

But if, on impeachment, the President is not convicted and removed from office despite the fact that numerous Senators are convinced that he has, in the words of one proposed resolution of censure, "egregiously failed" the test of his oath of office, "violated the trust of the American people," and "dishonored the office which they entrusted to him," then the Office of the Presidency has been deeply and perhaps permanently damaged.

And that is a further reason why President Clinton must be convicted of the charges brought before you by the House and removed

from office. To fail to do so, while conceding that the President has engaged in egregious and dishonorable behavior that has broken the covenant of trust between himself and the American people, is to diminish the Office of President of the United States in an unprecedented and unacceptable way.

Senators, please permit me a word on my own behalf and on behalf of my colleagues of the House. It is necessary to clarify an important point.

None of us comes to this Chamber today without a profound sense of our own responsibilities in life, and of the many ways in which we have failed to meet those responsibilities, to one degree or another. None of us comes before you claiming to be a perfect man or a perfect citizen, just as none of you imagines yourself perfect. All of us, Members of the House and Senate, know that we come to this difficult task as flawed human beings, under judgment.

That is the way of this world: flawed human beings must, according to the rule of law, judge other flawed human beings.

But the issue before the Senate of the United States is not the question of its own Members' personal moral condition. Nor is the issue before the Senate the question of the personal moral condition of the Members of the House of Representatives. The issue here is whether the President has violated the rule of law and thereby broken his covenant of trust with the American people. This is a public issue, involving the gravest matter of the public interest. And it is not affected, one way or another, by the personal moral condition of any Member of either House of Congress, or by whatever expressions of personal chagrin the President has managed to express.

Senators, we of the House do not come before you today lightly. And, if you will permit me, it is a disservice to the House to suggest that it has brought these articles of impeachment before you in a mean-spirited or irresponsible way. That is not true.

We have brought these articles of impeachment because we are convinced, in conscience, that the President of the United States lied under oath; that the President committed perjury on several occasions before a Federal grand jury. We have brought these articles of impeachment because we are convinced, in conscience, that the President willfully obstructed justice and thereby threatened the legal system he swore a solemn oath to protect and defend.

These are not trivial matters. These are not partisan matters. These are matters of justice, the justice that each of you has taken a solemn oath to serve in this trial.

Some of us have been called "Clinton-haters." I must tell you, distinguished Senators, that this impeachment is not, for those of us from the House, a question of hating anyone. This is not a question of whom we hate. It is a question of what we love. And among the things we love is the rule of law, equal justice before the law, and honor in our public life. All of us are trying as hard as we can to do our duty as we see it—no more and no less.

Senators, this trial is being watched around the world. Some of those watching, thinking themselves superior in their cynicism, wonder what it is all about. But others know.

Political prisoners know that this is about the rule of law—the great alternative to arbitrary and unchecked state power.

The families of executed dissidents know that this is about the rule of law—the great alternative to the lethal abuse of power by the state.

Those yearning for freedom know that this is about the rule of law—the hard-won structure by which men and women can live by their God-given dignity and secure their God-given rights in ways that serve the common good.

If they know this, can we not know it?

If, across the river in Arlington Cemetery, there are American heroes who died in defense of the rule of law, can we give less than the full measure of our devotion to that great cause?

I wish to read you a letter I recently received that expresses my feelings far better than my poor words:

DEAR CHAIRMAN HYDE: My name is William Preston Summers. How are you doing? I am a third grader in room 504 at Chase Elementary School in Chicago. I am writing this letter because I have something to tell you. I have thought of a punishment for the president of the United States of America. The punishment should be that he should write a 100 word essay by hand. I have to write an essay when I lie. It is bad to lie because it just gets you in more trouble. I hate getting in trouble.

It is just like the boy who cried wolf, and the wolf ate the boy. It is important to tell the truth. I like to tell the truth because it gets you in less trouble. If you do not tell the truth people do not believe you.

It is important to believe the president because he is a important person. If you can not believe the president who can you believe. If you have no one to believe in then how do you run your life. I do not believe the president tells the truth anymore right now. After he writes the essay and tells the truth, I will believe him again.

WILLIAM SUMMERS.

Then there is a P.S. from his dad:

DEAR REPRESENTATIVE HYDE: I made my son William either write you a letter or an essay as a punishment for lying. Part of his defense for his lying was the President lied. He is still having difficulty understanding why the President can lie and not be punished.

BOBBY SUMMERS.

Mr. Chief Justice and Senators, on June 6, 1994, it was the 50th anniversary of the Americans landing at Normandy. I went ashore at Normandy, walked up to the cemetery area, where as far as the eye could see there were white crosses, Stars of David. And the British had a bagpipe band scattered among the crucifixes, the crosses, playing "Amazing Grace" with that peaceful, mournful sound that only the bagpipe can make. If you could keep your eyes dry you were better than I.

But I walked to one of these crosses marking a grave because I wanted to personalize the experience. I was looking for a name but there was no name. It said, "Here lies in Honored Glory a Comrade in Arms Known but to God."

How do we keep faith with that comrade in arms? Go to the Vietnam Memorial on the National Mall and press your hands against a few of the 58,000 names carved into that wall, and ask yourself, How can we redeem the debt we owe all those who purchased our freedom with their lives? How do we keep faith with them? I think I know. We work to make this country the kind of America they were willing to die for. That is an America where the idea of sacred honor still has the power to stir men's souls.

My solitary—solitary—hope is that 100 years from today people will look back at what we have done and say, "They kept the faith."

I am done.

The CHIEF JUSTICE. The Chair recognizes the majority leader.

ADJOURNMENT UNTIL 9:30 A.M. TUESDAY, JANUARY 19, 1999

Mr. LOTT. Mr. Chief Justice, pursuant to the previous consent agreement, I now ask unanimous consent that the Senate stand in adjournment under that order.

The CHIEF JUSTICE. Without objection, it is so ordered. The Senate, under the previous order, stands adjourned until 9:30 a.m., Tuesday, January 19, at which time it will reconvene in legislative session. Under that same order, the Senate will next convene as a Court of Impeachment on Tuesday, January 19, at 1 p.m. The Senate stands adjourned.

Thereupon, at 2:53 p.m., the Senate, sitting as a Court of Impeachment, adjourned to reconvene in legislative session on Tuesday, January 19, 1999, at 9:30 a.m.

TUESDAY, JANUARY 19, 1999

[From the Congressional Record]

The Senate reconvened sitting as a Court of Impeachment at 1 p.m.

TRIAL OF WILLIAM JEFFERSON CLINTON, PRESIDENT OF THE UNITED STATES

The CHIEF JUSTICE. The Senate will convene as a Court of Impeachment. The Sergeant at Arms will make the proclamation.

The Sergeant at Arms, James W. Ziglar, made proclamation as follows:

Hear ye! Hear ye! Hear ye! All persons are commanded to keep silent, on pain of imprisonment, while the Senate of the United States is sitting for the trial of the Articles of Impeachment exhibited by the House of Representatives against William Jefferson Clinton, President of the United States.

The CHIEF JUSTICE. The majority leader is recognized.

Mr. LOTT. Mr. Chief Justice, it is my understanding that the White House presentation today will last approximately 2½ hours—maybe a little more, maybe a little less. I therefore suggest that a short recess be taken in approximately an hour, around 2 o'clock, to allow the Chief Justice and all Members to have a brief break.

I remind all Senators to remain standing at their desk each time the Chief Justice enters or departs the Chamber. If there is a need for another break, I will keep an eye on the White House counsel to see if they need a break, and we will act accordingly.

Of course, I remind Senators again, tonight please be in the Chamber at 8:35 so we can proceed to the joint session.

I thank my colleagues and yield the floor. I believe we are ready to begin.

THE JOURNAL

The CHIEF JUSTICE. If there is no objection, the Journal of proceedings of the trial is approved to date.

Pursuant to the provisions of Senate Resolution 16, the counsel for the President have 24 hours to make the presentation of their case. The Senate will now hear you. The Chair recognizes Mr. Counsel Ruff to begin the presentation of the case for the President.

Mr. Counsel RUFF. Mr. Chief Justice, Members of the Senate, distinguished managers, William Jefferson Clinton is not guilty of the charges that have been preferred against him. He did not commit perjury; he did not obstruct justice; he must not be removed from office.

Now, merely to say those words brings into sharp relief that I and my colleagues are here today in this great Chamber defending the President of the United States. For only the second time in our Nation's history, the Senate has convened to try the President of the United States on articles of impeachment.

There is no one who does not feel the weight of this moment. Nonetheless, our role as lawyers is much as it would be in any other forum. We will not be able to match the eloquence of the 13 managers who spoke to you last week. We will try, however, to respond to the charges leveled against the President as directly and candidly as possible, and to present his defense as clearly and as cogently as we are able. We seek on his behalf no more than we know you will give us—a fair opportunity to be heard, a fair assessment of the facts and the law, and a fair judgment. We will defend the President on the facts and on the law and on the constitutional principles that must guide your deliberations. Some have suggested that we fear to do so. We do not.

I begin with a recitation of some of the events that have brought us here today. Although many of them may be familiar, they merit some discussion because they form the backdrop against which you must assess the evidence.

I will then move to a discussion of the constitutional principles that, we submit, should guide your consideration of these matters and, finally, to an overview of the allegations contained in the articles, with a view toward focusing your attention on what we believe to be the principal legal and factual flaws in the case presented by the managers.

My colleagues will follow tomorrow and the following day with a more detailed analysis of the facts underlying the articles. At the end of our presentation, we will have demonstrated beyond any doubt that there is no basis on which the Senate can or should convict the President of any of the charges brought against him.

Let me begin with a brief recital of the essential events in the Paula Jones litigation which underlie so much of what we have been discussing for the last week.

On May 6, 1994, Paula Jones sued President Clinton in the U.S. District Court for the Eastern District of Arkansas. She claimed that then-Governor Clinton had made, in 1991, some unwelcomed overture to her in an Arkansas hotel room and that she suffered adverse employment consequences and was subsequently defamed.

After the Supreme Court decided in May 1997 that civil litigation against the President could go forward while he was in office, the case was remanded to the district court, and over the fall and winter of 1997, the Jones lawyers deposed numerous witnesses. And inevitably, despite the strict protective order entered by Judge Wright, and continuing exhortation to counsel not to discuss any aspect of the case with the press, information flowed from those depositions into the public forum clearly with only one purpose—to embarrass the President.

The principal focus of the discovery being conducted by the Jones lawyers during this period was not on the merits of their client's case. They devoted most of their time and their energy to attempt to pry into the personal life of the President. Mr. Bennett, the President's counsel, objected to those efforts on the grounds they had no relevance to Ms. Jones' claims and intended to do nothing other than to advance the agenda of those who were supporting the Jones lawsuit. The Jones lawyers, however, pursued their efforts to inquire into the President's relations with other women, and on December 11, 1997, Judge Wright issued an order allowing questioning regarding only "any individuals with whom the President had sexual relations or proposed or sought to have sexual relations and who were during the relevant timeframe a State or Federal employee."

Then on December 5, 1997, the Jones lawyers placed on their witness list the name of Monica Lewinsky. And on December 19, she was served with a subpoena for her deposition to be scheduled in January.

Consistent with rulings issued by Judge Wright in connection with the Jones lawyers' efforts to secure the testimony of a number of other women, some have sought to avoid testifying by submitting affidavits to the effect that they had no knowledge relevant to Ms. Jones' lawsuit, or that they otherwise do not meet the test that Judge Wright had established before permitting this invasive discovery to go forward.

On January 7, 1998, Ms. Lewinsky did execute such an affidavit, and her lawyer provided copies to the lawyers for Ms. Jones and for the President on January 15.

The Jones lawyers deposed the President on January 17, 1998. They began the deposition by proffering to him a multiparagraph definition of the term "sexual relations" that they intended to use in questioning him. There followed an extended debate among counsel and the court concerning the propriety and the clarity of that definition. Mr. Bennett objected to its use, arguing that it was unclear, that it would encompass conduct wholly irrelevant to the case, and that it was unfair to require the President to apply a definition that he had never seen before to each question he was asked. Indeed, Mr. Bennett urged the lawyers for Ms. Jones to ask the President specific questions about the conduct, but they declined to do so.

Judge Wright acknowledged the overbreadth of the definition, but she ultimately determined that the Jones lawyers could use the heavily edited version of the definition that left in place only the two lines of paragraph 1, of which you are already familiar. Imme-

diately after the extended legal skirmishing, the Jones lawyers began asking him about Monica Lewinsky.

Mr. Bennett objected, questioning whether counsel had a legitimate basis for their inquiry in light of Ms. Lewinsky's affidavit denying a relationship with the President. Judge Wright overruled that objection and permitted the Jones lawyers to pursue their inquiry. Four days later, the independent counsel's investigation became a public matter.

On January 29, responding to a request by independent counsel to bar further inquiry related to Ms. Lewinsky, Judge Wright ruled that evidence relating to her relationship with the President would be excluded from the trial. She reaffirmed this ruling on March 9, stating that the evidence was not "essential to the core issues in this case of whether the plaintiff herself was the victim of sexual harassment, hostile work environment, or intentional infliction of emotional distress." On April 1, 1998, Judge Wright—

I apologize for the logistical problem. Why don't I just hold it.

On April 1, 1998, Judge Wright granted summary judgment in favor of President Clinton dismissing the Jones suit in its entirety. She ruled that no evidence that Ms. Jones had offered or that her lawyers had discovered made out any viable claim of sexual harassment or intentional infliction of emotional distress. Importantly, Judge Wright ruled that evidence of any pattern or practice of comparable conduct by the President was not important to the case.

I want to take just a moment to read the relevant portions of Judge Wright's opinion, not to demean in any sense plaintiff's claims of sexual harassment or to suggest that we must be other than vigilant to protect the rights of all citizens, but simply to bring into slightly sharper focus the role that the President's deposition played in the real Jones litigation. Judge Wright wrote:

> Whatever relevance such evidence may have to prove other elements of plaintiff's case, it does not have anything to do with the issue presented by the President's and Ferguson's motions for summary judgment—i.e. whether plaintiff herself was the victim of alleged quid pro quo or a hostile work environment or sexual harassment; whether the President and Ferguson conspired to deprive her of her civil rights or whether she suffered emotional distress so severe in nature that no reasonable person could be expected to endure it. Whether other women may have been subjected to workplace harassment and whether such evidence has allegedly been suppressed does not change the fact that plaintiff has failed to demonstrate that she has a case worthy of submitting to a jury.

Ms. Jones appealed Judge Wright's decision to the Eighth Circuit. Arguments were heard on October 20, 1998, and on November 13, 1998, before the decision was rendered, Ms. Jones and the President settled the case.

Briefly then, to what was happening on the front of the independent counsel's office. In mid-January 1998, Linda Tripp had brought to the independent counsel information that she had been gathering surreptitiously for months about Ms. Lewinsky's relationship with the President and her involvement in the Jones case. And thus, began the penultimate chapter.

As you will see, Ms. Tripp's relationship with Ms. Lewinsky and her role in these matters was more than merely a backdrop to the succeeding events. Independent counsel met with Ms. Tripp and formally granted her immunity from Federal prosecution and promised to assist her in securing immunity from State prosecution

where she had been illegally taping the telephone calls with Ms. Lewinsky. On January 13, Ms. Tripp agreed to tape a conversation with Ms. Lewinsky under FBI auspices. And on January 15, armed with that tape, the independent counsel's office first contacted the Department of Justice to seek permission from the Attorney General to expand its jurisdiction to cover the investigation that had already begun. On January 16, that permission was granted by the special division of the court of appeals.

Now, the President's deposition was scheduled to take place the very next day—Saturday, January 17. On the 16th, Ms. Tripp invited Ms. Lewinsky to have lunch with her at the Pentagon City Mall. There she was greeted by four FBI agents and independent counsel lawyers and taken to a hotel room where she spent the next several hours. Ms. Tripp was in the room next door for much of that time. When she left that evening, she went home to meet with the Jones lawyers with whom we know she had been in contact for many months in order to brief them about her knowledge of the relationship between Ms. Lewinsky and the President so that they, in turn, could question the President the next morning.

As the independent counsel himself has acknowledged, Ms. Tripp was able to play this oddly multifaceted role. Because it was part of her immunity agreement, the OIC could have prevented her from talking about Ms. Lewinsky. They inexplicably chose not to.

The existence of the OIC investigation was made public on January 21 in an edition of the Washington Post with the all-consuming focus of media coverage for the ensuing 8 months.

On August 17, the President's deposition was taken by the independent counsel for use by the grand jury, and on September 9, there was delivered to the House of Representatives a referral of Independent Counsel Starr containing what purported to be the information concerning acts "that may constitute grounds for impeachment." The referral was accompanied by some 19 boxes of documents, grand jury transcripts, and a videotape of the grand jury testimony.

The referral was made public by the House on September 11. On September 21, additional materials were released, along with the President's grand jury videotape that was then played virtually nonstop on every television station in the country during that day.

The committee held a total of 4 days of hearings, one for preliminary presentations by the majority and minority counsel, one for testimony by Independent Counsel Starr, and two in which the President was permitted to call witnesses and present his defense.

In addition, the constitutional subcommittee held the one hearing on the standards for impeachment, and the committee convened in its oversight capacity to hear witnesses on the meaning of perjury. The committee called no fact witnesses.

Despite numerous efforts to extract from the committee some description of the specific charges against which the President would have to defend himself, it was not until approximately 4:30 on December 9, as I was completing my testimony before the committee, that any such notice was provided, and then it came in the form of four draft articles of impeachment.

Three days later, the committee reported out those articles, and on December 9 the House completed its action, referring to the

Senate article I, the charge of perjury in the grand jury; defeated article II, which alleged perjury in the Jones deposition; exhibited article III, which charged obstruction of justice; and defeating article IV, which alleged false statements to the House of Representatives.

And so we are here. But before moving on, let me pause on an important procedural point. Although the Senate has asked that the parties address the issue of witnesses only after these presentations are completed, the managers spent much of their time last week explaining to you why, if only witnesses could be called, you would be able to resolve all of the supposed conflicts in the evidence. Tell me, then, how is it that the managers can be so certain of the strength of their case? They didn't hear any of these witnesses. The only witness they called, the independent counsel himself, acknowledged that he had not even met any of the witnesses who testified before the grand jury. Yet, they appeared before you to tell you that they are convinced of the President's guilt and that they are prepared to demand his removal from office.

Well, the managers would have you believe that the Judiciary Committee of the House were really nothing more than grand jurors, serving as some routine screening device to sort out impeachment chaff from impeachment wheat. Thus, as they would have it, there was no need for anything more than a review of the cold record prepared by the independent counsel; no need for them to make judgments about credibility or conflicts. Indeed, they offered you a short lesson in grand jury practice, telling you that U.S. attorneys do this thing all the time, that calling real, live witnesses before a grand jury is the exception to the rule. Well, it has been a few years since I served as U.S. attorney for the District of Columbia, so there may have been a change in the way prosecutors go about their business, but I don't think so.

And so what lesson can be learned from the process followed by the House? I suggest that what you have before you is not the product of the Judiciary Committee's well-considered, judicious assessment of their constitutional role. No, what you have before you is the product of nothing more than a rush to judgment.

And so how should you respond to the managers' belated plea that more is needed to do justice? You should reject it. You have before you all that you need to reach this conclusion: There was no basis for the House to impeach, and there is no, and never will be any, basis for the Senate to convict.

Now, the managers have not shown, and could not on this record or any record prove, that the President committed any of the offenses alleged in any of the articles. But even if they could, these offenses would not warrant your deciding to remove the President from office.

In this regard, an impeachment trial is unlike any other. You are the judges of the law and the facts and the appropriate sanctions. Before casting a vote of guilty or not guilty, you must decide not only whether the President committed the acts with which he is charged but whether those acts so seriously undermined the integrity of our governmental structure that he must be removed from office.

I want to deal here for just a moment with an argument that was advanced in the press by one of the managers, and that is that the question whether the offenses described in the articles are impeachable is not really before you, that it has already been decided by the House. As the manager put it in a press interview, "Are these impeachable offenses, which I think has already been resolved by the House? I think constitutionally that's our job to do."

Now, I trust, in light of last week's extended discussion, that the managers no longer press that notion, for it was remarkable in at least three respects. First, it is entirely inconsistent with the "don't worry about it; this is just a routine procedural process; leave the difficult decisions to the Senate" argument so frequently heard during the proceedings in the House. Second, it is an argument that rings hollow coming from those who did not even debate the constitutional standards or seek any consensus on what those standards should be. And third, and most importantly, it arrogates to the House the critical constitutional judgment which is yours alone.

Far be it for me, or indeed anyone else, to instruct this body on its constitutional role, but I do think it would help us all to be reminded of the words of Alexander Hamilton in Federalist No. 65, because impeachment necessarily deals with injuries done immediately to society. Alexander Hamilton wrote:

> The prosecution of them for this reason will seldom fail to agitate the passions of the whole community, and to divide it into parties more or less friendly or inimical to the accused. In many cases it will connect itself with the preexisting factions, and will enlist all their animosities, partialities, influence, and interest on one side or on the other; and in such cases there will always be the greatest danger that the decision will be regulated more by the comparative strength of the parties than by the real demonstrations of innocence or guilt.
>
> The delicacy and magnitude of a trust which so deeply concerns the political reputation and existence of every man engaged in the administration of public affairs speak for themselves. The difficulty of placing it rightfully in a government resting entirely on the basis of periodical elections will as readily be perceived, when it is considered that the most conspicuous characters in it will, from that circumstance, be too often the leaders or the tools of the most cunning or the most numerous faction, and on this account can hardly be expected to possess the requisite neutrality towards those whose conduct may be the subject of scrutiny.

And then:

> The convention, it appears, thought the Senate the most fit depositary of this important trust.

Now, the President may be removed from office only upon impeachment for and conviction of treason, bribery or other high crimes and misdemeanors. The offenses charged here, even if supported by the evidence, do not meet that lofty standard, a standard that the framers intentionally set at this extraordinarily high level to ensure that only the most serious offenses and in particular those that subverted our system of government would justify overturning a popular election. Impeachment is not a remedy for private wrongs. It is a method of removing someone whose continued presence in office would cause grave danger to the Nation. Listen to the words of 10 Republican Members of the 1974 Judiciary Committee, one of whom now sits in this body.

After President Nixon's resignation, in an effort to articulate a measured and a careful assessment of the issues they had confronted, they reviewed the historical origins of the impeachment clause and wrote:

It is our judgment, based upon this constitutional history, that the framers of the United States Constitution intended that the President should be removable by the legislative branch only for serious misconduct, dangerous to the system of government established by the Constitution. Absent the element of danger to the State, we believe the delegates to the Federal convention of 1787, in providing that the President should serve for a fixed elective term rather than during good behavior or popularity, struck the balance in favor of stability in the executive branch.

Where did this lesson in constitutional history come from? It came directly from the words of the framers in 1787. Impeachment was no strange, arcane concept to them. It was familiar to them as part of English constitutional practice and was part of many State constitutions. It is therefore not surprising that whether to make provision for impeachment of the President became the focus of contention, especially in the context of concern whether in our new republican form of government the legislature ought to be entrusted with such a power. On this latter point, perhaps foretelling the notion that impeachment ought to be a matter of constitutional last resort, Benjamin Franklin noted that it at least had the merit of being a peaceful alternative to revolution.

Governor Morris, one of the principal moving forces behind the language that ultimately emerged from the convention, believed that provision for impeachment should be made but that the offenses must be limited and carefully defined. His concern was very clearly for the corrupt President who may be bribed by a greater interest to betray his trust, as he wrote, and "no one ought to say that we ought to expose ourselves to the danger of seeing the first magistrate in foreign pay without being able to guard against it by displacing him."

Drafts as they emerged from the convention moved through one that authorized impeachment for treason or bribery or corruption, and then the more limited treason or bribery, until the critical debate of December 8, 1787, when, pointing to their then-current example of the impeachment of Warren Hastings, George Mason moved to add the word "maladministration" to that definition. It was in the face of objections from James Madison and Morris, however, that this term was too vague and would be the equivalent to tenure during the pleasure of the Senate, that Mason withdraw his proposal and the convention then adopted the language "other high crimes and misdemeanors against the State." As Morris put it, "an election every 4 years will prevent maladministration."

There is no question that the framers viewed this language as responsive to Morris' concerns that the impeachment be limited and well defined. To argue, then, as the managers do, that the phrase "other crimes and misdemeanors" was really meant to encompass a wide range of offenses that one might find in a compendium of English criminal law simply flies in the face of the clear intent of the framers who carefully chose their language, knew exactly what those words meant, and knew exactly what risks they intended to protect against.

Looking back on this drafting history, the 1974 minority report described the purpose of the framers in these words:

They were concerned with preserving the Government from being overthrown by the treachery or corruption of one man.

Now, the managers have made fun of the notion that hundreds of distinguished scholars and historians expressed their opinion

that the offenses with which the President has been charged are not high crimes or misdemeanors. Indeed they suggested—not too subtly—that they must have signed those letters because they were political supporters of the President. To quote them, "You go out and obtain from your political allies and friends in the academic world—to sign a letter saying the offenses alleged in the articles of impeachment do not rise to the level of impeachable offenses."

Well, as I understand the managers' position, it is that Garry Wills sold his intellectual soul because he is a political supporter of the President; Stephen Ambrose sold his political soul—his intellectual soul—because he is a political supporter of the President; C. Vann Woodward sold his intellectual soul because he is a political supporter of the President.

Is it possible, instead, that distinguished scholars of all political persuasions thought it important to offer their professional opinion on a matter of the greatest historical and legal import because they cared about our country? Because they cared that the constitutional process not be debased?

Perhaps, if the majority members of the full Judiciary Committee had paused for even a moment to consider these issues, if they had taken even a few hours to debate the question of what constitutional standards apply, one might now give greater credence to the belated constitutional exposition that they have offered here. Instead, perhaps the majority was convinced by their own rhetoric, by the oft-repeated mantra that impeachment is merely a preliminary step in the process and that the House need not be concerned with its weighty constitutional duty and saw little reason to explore the constitutional underpinning of that duty. Or perhaps they understood that a full and candid explanation would reveal that the proposed articles had no constitutional underpinning at all.

Now, the central premise of the managers' argument appears to be this: Perjury is an impeachable offense no matter the forum or the circumstances in which it is committed. Second, judges have recently been convicted and removed on the basis of articles charging that they committed perjury. The President committed perjury, therefore the President must be removed as well.

That premise is simple but wrong. The first leg on which it rests was removed by the House itself when it voted to defeat article II, alleging perjury in a civil deposition, and the House thus rejected the committee's core argument that perjury in a civil deposition warrants impeachment as much as perjury in any other setting. Thus, as to the committee's view that the constitutional standard for impeachment requires that all perjury be treated alike, the House concluded no, and properly so.

And as to the committee's view that it makes no difference whether perjury occurs in one forum or another, in a private or an official proceeding, again the House said no, and properly so.

What, then, of the managers' argument that the Senate's recent conviction of three judges requires a conviction on the articles before you today? Again, they simply have it wrong, both as a matter of Senate precedent and as a matter of constitutional analysis. They argue that because a judge is obliged to faithfully carry out the law just as the President is, each must be removed if he commits perjury or obstructs justice. Judges and Presidents, and one

would presume, all other civil officers if you follow their argument to its logical conclusion, including Assistant Secretaries and others, must in their view be removed from office if the Senate finds that they committed either offense—removed without a second thought. But judges are different. Indeed, every civil officer other than the President of the United States is different. They are different because before deciding whether to impose the ultimate sanction of removal the Senate must weigh in the balance dramatically different considerations.

First, the answer to the ultimate impeachment question—that is, whether the conduct charged so undermines the official's capacity to perform his constitutional duties that removal is required despite the institutional trauma it may cause—must be very different for one of 900 or 1,000 judges with lifetime tenure who can only be removed by impeachment than it is for one person elected every 4 years by the people to serve as the head of the executive branch. Surely the managers recognize that the Senate here faces a far different question, a far different constitutional issue than it did, for example, when it asked whether Judge Nixon, convicted and imprisoned for perjury, should be permitted to retain his office; or whether Judge Hastings, who lied about taking a bribe to fix a case before him, should remain on the bench.

Indeed, a telling rejoinder to the House managers' argument comes from President Ford. On many occasions, we have all seen cited his statement in 1970, in connection with the proposal to impeach Associate Justice William O. Douglas, that impeachment is, in essence, whatever the majority of the House of Representatives considers it to be. But no one really notes the more important part of President Ford's statement 29 years ago. I am going to read it to you:

> I think it is fair to come to one conclusion, however, from our history of impeachments. A higher standard is expected of Federal judges than of any other civil officers of the United States. The President and the Vice President and all persons holding office at the pleasure can be thrown out of office by the voters at least every 4 years. To remove them in midterm—it has been tried only twice and never done—would, indeed, require crimes of the magnitude of treason and bribery.

The Senate must ask here whether the conduct charged against President Clinton would, in its nature, be inconsistent with a decision to allow him to continue to perform the duties of his office, just as you would ask, if you had a judge before you or another civil officer before you, whether the charges are similarly inconsistent with the notion that he or she should be allowed to continue to perform those duties.

As former House Judiciary Committee Chairman Peter Rodino, who surely understood the difference between impeaching a President and impeaching a judge, explained during the Claiborne proceedings before this body:

> The judges of our Federal courts occupy a unique position of trust and responsibility in our government. They are the only members of any branch that hold their office for life. They are purposely insulated from the immediate pressures and shifting currents of the body politic. But [he said] with the special prerogative of judicial independence comes a most exacting standard of public and private conduct.

A similar theme can be found running through the debate in very recent years over a proposal to establish a process other than impeachment for the removal of judges who fail to live up to the good

behavior standard. Both the proponents of the proposal and the legal opinion offered in support of it emphasize that the standard to which judges must adhere is stricter than the impeachment standard, noting that "the terms treason, bribery and other high crimes and misdemeanors are narrower than the malfeasance in office and failure to perform the duties of the office which may be grounds for forfeiture of office held during good behavior."

Thus, whether weighing the constitutional or governmental implications of removal or asking whether the accused can be expected to perform his duties, the Senate has always recognized that the test will be different depending on the office that the accused holds.

This analysis is wholly consistent with the framers' intent in drafting the impeachment clause that removal of a President by the legislature must be an act of last resort when the political process can no longer protect the Nation. Nothing in the cases brought before the Senate in the last 210 years suggests a different result.

The managers also attribute to the President the argument that impeachment can never reach personal conduct. That is not our position. As I told the Judiciary Committee on December 9 when I testified before them, not all serious misconduct flowing from one of the President's official roles is impeachable; neither is all serious misconduct flowing from his personal conduct immune from impeachment. Judgments must be made and they must be based on the core principles that inform the framers' decision.

But the managers would, in effect, ask you to eschew making these judgments. They speak of perjury and obstruction of justice in general terms and they argue that they are offenses inimical to the system of justice.

No one here would dispute that simplistic proposition. But the managers will not walk with you down the difficult path. They will not speak of facts, of differing circumstances and differing societal interests. They will not because they do not appear to recognize that those questions must be asked.

Perhaps the one exception to this was in the very last moment of Chairman HYDE'S closing when he suggested, with what might to many seem almost an inverted logic, that a lie to spare embarrassment about misconduct on a private occasion is more deserving of removal than a lie about, as he described it, important matters of state.

Although I submit that conclusion might have struck the framers as somewhat odd, one can certainly conceive of acts arising out of personal conduct that would warrant conviction and removal, but you cannot ignore the circumstances in which the conduct occurs or abandon the core principle that impeachment should be reserved for those cases in which the President's very capacity to govern is called into question.

Perjury about some official act may indeed be a constitutionally acceptable basis for impeachment. Perjury about a purely private matter should, at the very least, lead this body to question whether, no matter how seriously we take the person's violation, for example, of the witness' oath, the drastic remedy of removal from office is the proper response. Indeed, in a sense, that is the message sent by the House when it defeated article II.

The principle that guides your deliberations, I suggest, must not only be faithful to the intent of the framers, it must be consistent with the governmental structure that they gave us and the delicate relationship between the legislative branch and the executive branch that is the hallmark of that structure. It must, above all, reflect the recognition that removal from office is an act of extraordinary proportions, to be taken only when no other response is adequate to preserve the integrity and viability of our democracy.

On this point—and here I will fend off the wrath or maybe the scorn of the managers by quoting not a scholar or a professor but, rather, a witness called by the majority members of the Judiciary Committee to testify as an expert on the issue of perjury, a witness who had served on the Judiciary Committee in 1974. Judge Charles Wiggins told the members of the committee this:

> When you are called upon, as I think you will be called upon, to vote as a Member of the House of Representatives, your standard should be the public interest. And I confess to you [said Judge Wiggins] that I would recommend that you not vote to impeach the President.

Beyond the impression of what constitutes an impeachable offense, each Senator must also confront the question of what standard the evidence must meet to justify a vote of guilty.

We recognize that the Senate has chosen in the Claiborne proceedings, and elsewhere, not to impose on itself any single standard of proof, but rather to leave that judgment to the conscience of the individual Senator. Many of you were present for debate on that issue and chose a standard for yourselves. Many of you come to the issue afresh. And none of you, thankfully, has had to face the issue in the setting of a Presidential impeachment.

Now, we argued before the Judiciary Committee that it must treat a vote to impeach as a vote to remove and that that judgment ought not be based on anything less than a clear and convincing standard, a standard, indeed, adopted by the Watergate committee 25 years ago. Surely no lesser standard should be applied here. Indeed, we submit to you that given the gravity of the decision you must reach, each of you should go further and ask whether the House has established guilt beyond a reasonable doubt. And this submission is made even more compelling by the managers' own position in which they made clear to you last week that proof of criminal conduct, in their view, was required to justify conviction.

Now, lawyers and laymen too often, I think, treat the standard of proof as meaningless legal jargon, with no real application to the world of difficult decisions. But I suggest to you that it is much more than that. It is the guidepost that shows you the way through the labyrinth of conflicting evidence. It tells you to look within yourself and ask, Would I make the most important decisions of my life based on the level of certainty I have about these facts, and in the unique legal political setting of an impeachment setting that protects against partisan overreaching and it assures the public that a grave decision is being made with due care? It is the disciplining force I think that you will carry with you into your deliberations.

And let me say that even if the clear and convincing standard is that which you apply for judicial impeachments, it does not follow that it should be applied where the Presidency itself is at

stake. With judges, the Senate must weigh and balance its concern for the independence of the judiciary against the recognition that, because a judge is appointed for life, impeachment is the only available method for removing from office those who are corrupt.

On the other hand, when a President is on trial, the balance is very different. Here you are asking, in effect, to overturn the will of the electorate, to overturn the results of an election held 2 years ago in which the American people selected the head of one of the three coordinate branches of Government.

Moreover, you have been asked to take this action in circumstances where, even taking the darkest view of the managers' position, there is no suggestion of corruption or misuse of office or any other conduct that places our system of Government at risk in the 2 remaining years of this President's term, when once again the people will get the chance to decide who should lead them. In this setting, we submit, you should test the evidence by the strictest standard you know.

I want to talk for a few minutes about what we see as the constitutional deficiency of the articles you have before you. When the framers took from English practice the parliamentary weapon of impeachment, they recognized that the form of the Government that they had created, with its finely tuned balance among the branches, was inconsistent with the parliamentary dominance inherent in the English model. They chose, therefore, to build a quasi-judicial impeachment process, one that had, admittedly, political overtones but that carried with it the basic principles of due process embodied in the Constitution they had written.

Among those principles is the sixth amendment's guarantee that the accused shall have the right to be informed of the nature and cause of the accusation against him. That right has been recognized to have special force in perjury cases, where it is the rule uniformly enforced by the courts that an indictment must inform the defendant specifically what false statement he is alleged to have made.

This is not some mere technicality; it is the law. It is the law because our courts have recognized that if a criminal charge is to be based on the words uttered by a fallible human being, he must be allowed to defend the truthfulness of the specific words he used and not be convicted on the basis merely of some prosecutor's summary or interpretation. This is not some legal nicety that the House of Representatives can ignore, as it has many other elements of due process. This is not an argument we raise with this body merely in passing as a lawyer's gambit. This is an important principle of our jurisprudence. And I suggest that it is one that this body must honor. There is not a court anywhere—from highest to lowest—that would hesitate, if they were confronted with an indictment written like these articles, to throw it out.

Indeed, if you want some evidence of how others have perceived this issue, look to the Hastings and Nixon cases, in both of which, the articles charging impeachment specifically stated the false statements that they were accused of having made.

Why, if the House understood the importance of specificity in those cases, did it not understand the, if anything, greater importance of telling the President of the United States what he was

charged with? If you compare the closing argument of majority counsel and the majority report filed by the committee and the trial brief filed by the House and the presentation of the managers last week, you will begin to understand what has happened here.

I challenge any Member of the Senate—indeed, any manager—to identify the charges that the House authorized them to bring. Just to take one example, we do not know to a certainty that the House decided—or we do know with certainty that the House decided not to charge perjury in the civil deposition. Yet, to listen to the managers' presentation last week, one would be hard put to conclude that they understood that. They have, in essence, treated these articles as empty vessels, to be filled with some witch's brew of charges considered, charges considered and abandoned, and charges never considered at all.

Both article I and article II are constitutionally deficient for other reasons as well. In particular, each charge's multiple offenses is therefore void, in the criminal justice vernacular, for duplicity because in a criminal case, and here as well, lumping multiple offenses together in one charging document creates a risk that a verdict may be based not on a unanimous finding of guilt as to any particular charge but, instead, may be composed of multiple individual judgments. And that risk is in direct violation of the requirement of the Constitution that this body agree by a two-thirds majority before the President may be removed.

Now, the House responds to the President's concerns in this regard by arguing that, well, the amendment of Senate rule 23, which prohibits division of the articles, somehow addresses this concern and that our argument would undermine the Senate's own rules. But that is not so. Rule 23 was approved to permit the most judicious and effective handling of the questions presented to the Senate. It cannot be that the Senate, in passing that rule—and you know surely better than I—decided to purchase efficiency in impeachment proceedings at the price of violating the Constitution, the mandate to ensure a two-thirds vote for removal.

Now, 3 years after the revision of rule 23, in the trial of Judge Nixon, this very issue was presented. And Senator KOHL captured that problem. Although the first and second articles of impeachment alleged that Judge Nixon had committed specific violations of the perjury statute, the third article was a catchall, alleging that he made "one or more" of 14 different false statements. And I would note for you that that language, "one or more," was identical to the language specifically inserted into article I at the request of Congressman ROGAN during the Judiciary Committee proceedings.

In addressing the propriety of such a charging device, Senator KOHL said:

> The managers should not be allowed to use a shotgun or blunderbuss. We should send a message to the House. Please do not bunch up your allegations. Charge each act of wrongdoing in a separate count. Such a change would clarify things and allow for a cleaner vote on guilt or innocence.

Senator Dole, who surely knew something about Senate rules and precedent, certainly didn't think that rule 23 bound the result in that Nixon case. He first voted to dismiss article III and then later voted to acquit Judge Nixon because it was redundant, complex, and confusing. Thirty-three Senators joined Senator Dole in

voting to dismiss the article, and a total of 40 voted to acquit when it came to a judgment of guilt or innocence.

Senators KOHL, BIDEN, and MURKOWSKI each spoke about the danger posed by this formulation. And I will look once more to Senator KOHL:

> This wording presents a variety of problems. First of all, it means that Judge Nixon can be convicted even if two-thirds of the Senate does not agree in which his political statements were false. The House is telling us that it is OK to convict Judge Nixon on article III even if we have different visions of what he did wrong. But that is not fair to Judge Nixon, to the Senate, or to the American people.

Those Senators were not acting in derogation of Senate Rules or precedents. They were acting in the spirit of fairness to the accused and in the very best tradition of American due process.

The CHIEF JUSTICE. The Chair recognizes the majority leader.

RECESS

Mr. LOTT. Mr. Chief Justice, I believe that counsel has indicated he is ready to take a break, so I ask unanimous consent that we take a brief 15-minute recess.

There being no objection, at 2:02 p.m., the Senate recessed until 2:21 p.m.; whereupon, the Senate reassembled when called to order by the Chief Justice.

The CHIEF JUSTICE. The Chair recognizes the majority leader.

Mr. LOTT. Mr. Chief Justice, I believe we will continue now with a further statement from Counsel Ruff.

The CHIEF JUSTICE. The Chair recognizes Mr. Counsel Ruff to continue his presentation.

Mr. Counsel RUFF. Thank you, Mr. Chief Justice.

My first question is: Is it working?

Thank you, very much. I apologize for the mechanical difficulties earlier. I could quickly go back over the first hour. [Laughter.]

I want now to move to an overview of the articles of impeachment themselves. As I said, as I came to the end of the first hour, these articles are constitutionally defective. They are also unsupported by the evidence. As we have noted, both articles are framed in the broadest generalities and pose multiple different defenses. Nothing contained in the Judiciary Committee's majority report, or in the trial brief, or in the presentation of the managers, cures the constitutional infirmity that infects these articles. Nonetheless, in framing our defense, they provide the only way through this uncharted landscape.

We have divided our substantive response to the articles into three parts.

Tomorrow, Mr. Craig will address the charges in Article I—that the President committed perjury before the grand jury.

Second, Ms. Mills will address those parts of Article II that charge the President with obstructing justice by causing concealment of gifts he had given to Ms. Lewinsky, and that he engaged in witness tampering in his conversations with Ms. Currie.

Third, Mr. Kendall will address the remaining allegations of obstruction on Thursday, and then we will close by hearing from Senator Bumpers.

Before I move to an overview of the articles and the response that you will hear over the next couple of days, I want to suggest

to you an approach to one of the most difficult questions that you face: How does one sitting in judgment on a case like this test the reliability of what he or she hears in the proceedings? Let me offer one test.

Those of you who have practiced on one side or the other in the criminal justice system know that the system places a special responsibility on a prosecutor—a burden to be open, candid, and forthcoming in his arguments, and most importantly, in representing the facts so that when a prosecutor recites the facts he is not expected to ignore the unfavorable ones. He is expected to be open with judge and jury. Of course, he can make an argument as to why a particular fact is really not so important, but he can neither conceal it nor misrepresent it. When you hear a prosecutor, or a team of prosecutors, misstate a fact or not tell you the whole story, you should wonder why. You should ask yourself whether the misstatement is an error, or whether it signals some underlying flaw in the prosecution's case, or some problem that they are trying to conceal. And you ought to be particularly skeptical when the fact that is concealed or isn't fully revealed is claimed by the prosecutors themselves to be crucial to their case.

We all sometimes speak with less than complete care, and we are justly criticized when we make mistakes. If I tell you something inadvertently that proves to be wrong, I expect to be held to account for that. And similarly, we must hold the managers accountable for their mistakes.

Last week, for example, you will recall that Mr. Manager SENSENBRENNER told you that during my coming before the Judiciary Committee, in his words,

> Charles Ruff was asked directly: Did the President lie during his sworn grand jury testimony? And Mr. Ruff could have answered that question directly. He did not, and his failure to do so speaks 1,000 words.

Just to be certain that the record is straight, let me read to you from the transcript of that Judiciary hearing.

> Representative SENSENBRENNER: The oath that witnesses take require them to tell the truth, the whole truth, and nothing but the truth. I seem to recall that there were a lot of people, myself included, when asked by the press what advice would we give to the President when he went to the grand jury, was to just tell the truth, the whole truth, and nothing but the truth.
>
> Mr. RUFF: He surely did.
>
> Representative SENSENBRENNER: Did he tell the truth, the whole truth, and nothing but the truth when he was in the grand jury?
>
> Mr. Ruff. He surely did.

I am certain that Mr. SENSENBRENNER would not intentionally mislead the Senate. But his error was one of inadvertence. But, in any event, now the record is clear.

Of considerably more importance than this momentary lapse are the many substantive flaws that we will point out to you in the coming days—sometimes pure errors of fact, sometimes errors of interpretation, sometimes unfound speculation. My colleagues will deal with many of these flaws at greater length as they discuss the specific charges against the President. But I will give you some examples as I read appropriate points in my overview today, because I want you to have in mind throughout our presentation, and indeed throughout the rest of the proceedings, this one principle: Beware of the prosecutor who feels it necessary to deceive the court.

Let me begin with article I.

Our system of justice recognizes the difficulties inherent in testifying under oath, and it affords important protections for the witness who may be charged with perjury, and thus the Judiciary Committee's dissatisfaction with the President's answers because they thought they were narrow, or even hairsplitting, in some sense reflect the dissatisfaction with the rules that have been applied for centuries in prosecuting this offense.

Further, it requires proof that a defendant knowingly made a false statement about a material fact. The defendant must have had a subjective intent to lie. The testimony that is provided as a result of confusion, mistake, faulty memory, or carelessness, or misunderstanding is not perjury. The mere fact that the recollection of two witnesses may differ does not mean that one is committing perjury. Common sense and the stringent requirements of the law dictate what law is required. As the Supreme Court has noted,

> Equally honest witnesses may well have different recollections of the same event, and thus, a conviction for perjury ought not to rest entirely upon an oath against an oath.

This is the rationale for the common practice of prosecutors to require significant corroborating evidence before they bring a perjury case. Indeed, the Department of Justice urges that its prosecutors seek independent corroboration, either through witnesses or corroborating evidence of a quality to assure that a guilty verdict is really well founded.

This isn't merely the argument we make as we are acting for the President. The bipartisan and former Federal prosecutors from whom you will hear will testify that neither they nor any reasonable prosecutor could charge perjury based upon the facts in this case.

Tom Sullivan, former U.S. Attorney for the Northern District of Illinois, told the committee that the evidence set out would not be prosecuted as a criminal case by a responsible Federal prosecutor.

Richard Davis, a former colleague of mine on the Watergate special prosecution force, testified that no prosecutor would bring this case of perjury because the President acknowledged to the grand jury the existence of an improper relationship and argued with prosecutors questioning him that his acknowledged conduct was not a sexual relationship as he understood the definition of that term used in the Jones deposition. And that is where you need to begin your focus as you look at the charge that the President perjured himself in the grand jury in August of last year.

Any assessment of that testimony must begin with one immutable fact. He admitted that he had, in his words, inappropriate, intimate contact with Monica Lewinsky. No one who was present for that testimony, has read the transcript, or watched the videotape could come away believing anything other than that the President and Ms. Lewinsky engaged in sexual conduct. Indeed, even the prosecutors, who surely cannot be accused of being reluctant to find Presidential misconduct, contended not that the President had lied about the nature of his relationship but only about the details. Yet, the managers, in their eagerness to find misconduct where none had found it before, have searched every nook and cranny of the grand jury transcript and sent forward to you a shopping list

of alleged misstatements, obviously in the hope that among them you will find one with which you disagree. But they hope in vain. The record simply will not support a finding that the President perjured himself before the grand jury.

Now, much of the questioning by the prosecutors and much of the grand jury testimony about which the House now complains so vociferously dealt with the President's efforts to explain why his answers in the Jones deposition, certainly not pretty, were, in his mind, truthful, albeit narrowly and artfully constructed.

We are not here to talk to you today about the President's testimony in the Jones deposition. We do seek to convince you that before the grand jury the President was open, candid, truthful.

Now, the managers begin by asking you to look at the prepared statement that the President offered at the very beginning of his grand jury appearance. Before the President actually began his testimony, his lawyer, Mr. Kendall, spoke to Mr. Starr and told him that at the first moment at which there was an inquiry concerning the detailed nature of the relationship with Ms. Lewinsky, he wished to make a prepared statement, and he was permitted to do so. That statement acknowledged the existence of an intimate relationship, but it did not discuss the specific physical details in what I think we will all understand to have been an effort to preserve the dignity of the office.

Now, the House has charged that this statement was somehow a "premeditated effort to thwart the OIC's investigation." That is errant nonsense. Even independent counsel saw no such dark motive in this statement.

Now, first, the managers advance the baseless charge that the President intentionally placed the beginning of his relationship with Ms. Lewinsky in 1996 rather than 1995 as she testified. Interestingly, they don't even purport to offer any support for this charge other than Ms. Lewinsky's testimony, and they offer not even the somewhat odd explanation originally offered by the independent counsel to explain why the President, having admitted the very worst things a father and husband can conceivably admit, would have shifted the time by 3 months.

Next, the managers assert that the President's admission that he engaged in wrongful conduct "on certain occasions" was false because the President actually engaged in such conduct some 11 times, and they assert as well that when the President admitted he had occasional telephone conversations that included inappropriate discussions, that was false because they had actually had 17 such phone conversations.

Now, the President gave his best recollection of the frequency of those contacts. Ms. Lewinsky gave hers. Assuming that the majority is correct in its assumption that there were 11 or 17, can anyone imagine a trial in this court or in any other court in which the issue of whether "certain occasions" by definition could not mean 17 and "occasionally" could not refer to 11 would be the issue being litigated?

Even the independent counsel, again, who could, of course, have pressed the President for specific numbers had they thought it important, did not take issue with this testimony.

Thus, the perjury charge in article I again comes down to the same allegations contained in the independent counsel's referral, that the President lied to the grand jury about two things—his subjective, his personal subjective understanding of the definition used in the Jones deposition and, second, he lied when he denied that he engaged in certain details of inappropriate conduct.

Now, to conclude that the President lied to the grand jury about his relationship with Ms. Lewinsky, you must determine—forgive me—that he touched certain parts of her body, but for proof you have only her oath against his oath.

Those among you who have been prosecutors or criminal defense lawyers know that perjury prosecutions, as rare as they are, would never be pursued under evidence available here. And those among you who could not bring that special experience at least bring your common sense and are equally able to assess the weakness of the case that would rest on such a foundation.

Common sense also is enough to tell you that there cannot be any basis for charging a witness with perjury on the ground that you disbelieve his testimony about his own subjective belief in a definition of a term used in a civil deposition. Not only is there no evidence to support such a charge here, it is difficult to contemplate what evidence the managers might hope to rely on to meet that burden.

Now, it is worth noting that Mr. Bennett, at the time of the deposition, pressed the Jones lawyers to ask the President specific questions about his conduct rather than rely on this confusing definition that they proffered. In fact, when the President was asked in the grand jury whether he would have answered those questions, he said, of course, if the judge had ruled them appropriate, he would have answered truthfully. But the Jones lawyers persisted in their somewhat strange cause, strange unless one asked whether, armed with Ms. Tripp's intelligence, they purposely sought in some fashion to present the independent counsel a record that would permit just the sort of dark interpretation both he and the managers have proffered.

I point you to one thing. If you seek evidence that the President took the definition he was given seriously, and he responded carefully to the questions put to him, even if they required the most embarrassing answers, one need only look to the painful admission that he did have relations with another woman and he testified to the grand jury the definition required that he make that admission. Here is what he said to the grand jurors:

> I read this carefully, and I thought about it. And I thought about what "contact" meant, and I thought about [other phrases] and I had to admit under this definition that I had actually had relations with Gennifer Flowers.

Now, undeterred in its search for some ground on which to base the charge that the President lied to the grand jury, article I abandons even the modest level of specificity found in the independent counsel's referral and advances the claim:

> The President gave perjurious, false and misleading testimony regarding prior statements of the same nature he made in his deposition.

There can be no stronger evidence of the constitutional deficiency of this article than this strangely amorphous charge as a deficiency

that becomes even more obvious when you finally stumble across the theory on which the managers rely. To the extent one can determine what the Judiciary Committee had in mind when it drafted this clause, it appears that they intended to charge the President with perjury before the grand jury because he testified that he believed—believed—that he had, in his words, "worked through the minefield of the Jones deposition without violating the law." And that they hoped to support that charge by reference to various allegedly false statements in his deposition as charged in article II. Unhappily for the managers, however, the House rejected article II and it is not before you in any form. Moreover, there is not a single suggestion in the committee debate—or, more importantly, in the House debate—that those voting to impeach the President believed that this one line that I have quoted to you from the President's grand jury testimony, somehow absorbed into article I his entire deposition testimony.

If there is to be any regard for constitutional process, the managers cannot be allowed to rely on what the Judiciary Committee thought were false statements encompassed in a rejected article II to flesh out the unconstitutionally nonspecific charges of article I. The House vote on article II foreclosed that option for all time.

Now, article I next alleges that the President lied to the grand jury about the events surrounding certain statements made by Mr. Bennett during the Jones deposition. Specifically, the managers charge that the President was silent when Mr. Bennett characterized the Lewinsky affidavit as meaning there was no sex of any kind in any manner, shape, or form with President Clinton, and that the President then gave a false explanation to the grand jury when he testified that he wasn't really paying attention when his lawyer said that.

Now, as we noted earlier, Mr. Bennett argued to Judge Wright that, in light of Ms. Lewinsky's affidavit denying a relationship, the Jones lawyers had no good-faith basis for questioning the President about her. The President was not involved in the lengthy back and forth among the judge, the Jones lawyers, and Mr. Bennett. He said nothing. When he was asked in the grand jury about Mr. Bennett's statement, he said, "I'm not even sure I paid much attention to what Mr. Bennett was saying."

Now, the managers assert that this is false because the videotape shows that the President was in fact paying attention. But a fairer view of the videotape, I suggest to you, shows the President looking, indeed, in Mr. Bennett's direction, and in the direction of the judge, but giving no sign that he was following the discussion. He didn't nod his head. He didn't make facial expressions. There was nothing to reflect an awareness of the substance of what was happening, much less what was said in Mr. Bennett's statement.

Now, I don't know how large a group this would be, but any of you who has ever represented a witness or been a witness in a deposition will readily understand the President's mindset, that the lawyers and the judge debated these issues, and you will understand, too, that to charge him with perjury for having testified falsely about his own state of mind with nothing more to rely on than a picture would strain credulity in any prosecutor's office and flies past the bounds of constitutional reason in this Chamber.

I move, now, to the allegations in Article II charging the President with obstruction of justice in the Jones lawsuit and in the grand jury investigation. I want to talk first about what has become known as the concealment of gifts theory. The allegation that the President participated in some scheme to conceal certain gifts he had given to Ms. Lewinsky centers on two events allegedly occurring on December 28, 1997: First, conversation between the President and Ms. Lewinsky in the White House in which the two discussed the gifts, at least briefly, that he had given to Ms. Lewinsky; and, B, Ms. Currie's picking up a box of gifts from Ms. Lewinsky and storing them under her bed.

The managers, as was true of the majority report—and the independent counsel role before that—build their theory in this case not on seven pillars of obstruction but on seven shifting sand castles of speculation. Monica Lewinsky met with the President on December 28, 1997, sometime shortly before 8 a.m., to exchange Christmas presents. According to Ms. Lewinsky, they briefly discussed the subject of gifts she had received from the President in connection with her receipt some days earlier of the subpoena in the Jones case, and this was the first and the only time, she says, in which the subject was ever discussed.

Now, the managers quote one conversation of Ms. Lewinsky's description of that December 28 version as follows:

> At some point I said to him, well, you know, should—maybe I should put the gifts away outside my house somewhere or give them to someone, maybe Betty. And he sort of said—I think he responded "I don't know," or "let me think about that," and left that topic.

But the Senate should know that in fact Ms. Lewinsky has discussed this very exchange on at least 10 different occasions and that the very most she alleges in any of them is that the President said, "I don't know," or "Let me think about it," when she raised the issue of the gifts. Indeed, in many of her versions she said, among other things, there really was no response, that the President did not respond, that she didn't have a clear image in her mind what to do next. She also testified that Ms. Currie's name did not come up because the President really didn't say anything. And, most importantly, in not a single one of her multiple versions of this event did she say that the President ever initiated any discussion about the gifts, nor did he ever suggest to her that she conceal them.

Now, there being no evidence of obstruction in that conversation, the managers would have you believe that after Ms. Lewinsky left the White House that day, the President must have told Betty Currie to retrieve the gifts from Ms. Lewinsky. But there is absolutely no evidence that that discussion ever occurred. The only two parties who would have knowledge of it, the President and Ms. Currie, both denied it ever took place.

Now, in the absence of any such evidence, the managers have relied on Ms. Lewinsky's testimony that Ms. Currie placed a call to her and told her—depending on Ms. Lewinsky's version—either that the President had said to Betty Ms. Lewinsky had something for her or merely that she, Ms. Currie, understood that Ms. Lewinsky had something for her.

In this regard, it is important to remember that Ms. Lewinsky herself testified that she was the one who first raised with the President the notion that Ms. Currie could hold the gifts. And it is important to recognize that, contrary to the managers' suggestion to you that Ms. Lewinsky's memory of this event has always been consistent and—"unequivocal," I think was their word—she herself acknowledged at her last grand jury appearance that her memory of the crucial conversation is less than crystal clear. To wit:

A JUROR: Do you remember Betty Currie saying that the President had told her to call?

Ms. LEWINSKY: Right now, I don't remember.

And now we come to the first example I promised you of prosecutorial—what shall we call it?—fudge. Starting from the premise that Betty Currie called Monica Lewinsky and told her that she understood she had something for her and then went to pick up a sealed box containing some of the gifts she had received, Ms. Lewinsky had received from the President, first the independent counsel concluded, and then the majority report concluded, and now the managers have concluded, that the President must have instructed Ms. Currie to go pick up these gifts—to call Ms. Lewinsky and make the arrangements. So that they determined that when Ms. Currie said it was Ms. Lewinsky who called her, Ms. Currie was mistaken or, if you listen carefully, maybe worse. And when the President testified that he didn't tell Ms. Currie to call Ms. Lewinsky, he was—well, just worse. And this surmise is made absolutely certain, in the view of the managers, because a newly discovered, unknown even to independent counsel, cell phone record shows that Ms. Currie called Ms. Lewinsky at 3:32 p.m. on December 28 and that must be the call that Ms. Lewinsky remembered.

Let's look now at how the majority counsel for the committee put it in his closing argument to the Judiciary Committee. I have put his words up on the chart, and you all should have it in front of you as well:

There is key evidence [said majority counsel] that Ms. Currie's fuzzy recollection is wrong. Monica said that she thought Betty called from her cell phone. Well, look at this record. [Show it to you later.] This is Betty's cell phone record. It corroborates Monica Lewinsky and proves conclusively that Ms. Currie called Monica from her cell phone several hours after she had left the White House. Why did Betty Currie pick up the gifts from Ms. Lewinsky? The facts strongly suggest the President directed her to do so.

There is a slight problem with the majority counsel's epiphany, as it has been passed down to the managers and then to you. For you see—and here is the cell phone record—it reflects that at 3:32 p.m. on December 28, from Arlington, VA, to Washington, DC—that is Ms. Lewinsky's number—there was a call of a minute, it says here. And then we have to ask, Does this timing fit with the rest of the testimony?

Well, the answer is, no, it doesn't, because on three separate occasions, Ms. Lewinsky testified that Ms. Currie came over to pick up the gifts at 2 o'clock in the afternoon, an hour and a half before the phone call. It is not as though we have been hiding the ball on this, Senators. We discussed this issue at length in our trial

brief, and the managers do seem to have recognized at least some of the problem, because they have told you, albeit without the slightest evidentiary support, that maybe Ms. Lewinsky just miscalculated a little bit. Well, maybe she just miscalculated a little bit three times. Look at the record:

FBI interview, July 27: "Lewinsky met Currie on 28th Street outside Lewinsky's apartment at about 2 p.m. and gave Currie the box of gifts."

FBI interview, August 1: "Lewinsky gave the box to Betty Currie when Currie came by the Watergate about 2 p.m."

Grand jury testimony, 3 weeks later: "I think it was around 2 p.m. or so, around 2:00 in the afternoon."

The managers speculate that if only the independent counsel had had this phone record when they were interviewing Ms. Lewinsky, they could have refreshed her recollection. Having been one, I can tell you, that's prosecutor speak for "if we'd only known about that darn record, we could have gotten her to change her testimony."

But the managers have one other problem that they didn't address. The phone record—if we can go back to that for a moment—the phone record shows a call lasting 1 minute. All of us who have cell phones know that really means it lasted well short of a minute, because the phone company rounds things up to the nearest minute, just to help us all with our bookkeeping. [Laughter.]

So now it will be necessary not only for Ms. Lewinsky's memory to be refreshed about the hour of the pickup, but to explain how the arrangements for it could have been made between Ms. Lewinsky and Ms. Currie in somewhere between 1 and 60 seconds.

Putting these factual difficulties aside, this charge must fail for another reason. As you all know from presentations earlier, the President gave Ms. Lewinsky several gifts on the very day that they met, December 28. Faced with having to explain why on the day that the President and Monica Lewinsky were conspiring to conceal gifts from the Jones' lawyers the President gave her additional ones, the managers surmised that the real purpose was because it was part of a subtle effort to keep Ms. Lewinsky on the team, but in truth the only reasonable explanation for these events is the one the President gave to the grand jury. He was simply not concerned about gifts. He gave a lot, he got a lot, and he saw no need to engage in any effort to conceal them.

The President did not urge Ms. Lewinsky to conceal the gifts he had given her and, of course, he did not lie to the grand jury about that subject.

The next point I want to discuss with you is the statements the President made to Betty Currie on the day after the Jones deposition, January 18 of last year. There is no disputing the record, no conflict in testimony that the President did meet with his secretary, Betty Currie, on the day after the Jones deposition and they discussed Monica Lewinsky.

The managers cast this conversation, this recitation, this series of statements and questions put by the President to Ms. Currie in the most sinister light possible and allege that the President attempted to influence the testimony of a "witness" by pressuring Ms. Currie to agree with an inaccurate version of the facts surrounding his relationship with Ms. Lewinsky.

President Clinton has adamantly denied that he had any such intention, and that denial is fortified by the undisputable factual record establishing that Betty Currie neither was an actual or a contemplated witness in the Jones litigation, nor did she perceive that she was being pressured in any respect by the President to agree with what he was saying.

First, Ms. Currie's status as a witness in the only proceeding the President knew about at that moment, the Jones case, Ms. Currie was neither an actual nor a prospective witness. As to the only proceeding in which she ultimately became a witness, no one would suggest, managers, no one else would suggest the President knew that the independent counsel was conducting an investigation into his activities.

In the entire history of the Jones case, Ms. Currie's name had not appeared on any of the witness lists, nor was there any reason to suspect Ms. Currie would play a role in the Jones case. Discovery was down to its final days. The managers speculate that the President's own references to Ms. Currie during his deposition meant she was sure to be called by the Jones lawyers. Yet, in the days, weeks following the deposition, the Jones lawyers never listed her, never contacted her, never added her to any witness list. They never deposed her; they never noticed the deposition.

Indeed, when the independent counsel interviewed the Jones lawyers, they apparently neglected to ask whether they had ever intended to call Betty Currie as a witness. One can be sure that if such an intent existed, they would have asked and it would have been included in the referral.

Moreover, it is a sure bet that the Jones lawyers already knew about Betty Currie and her relationship with Monica Lewinsky. Why? Because we know from her own recorded telephone conversations that Ms. Tripp had been in contact with the Jones lawyers for months, and we know that she spent the evening before the President's deposition telling them everything she knew.

It didn't take a few references to his secretary by the President to trigger a subpoena for Betty Currie if they had ever wanted to do that, and they never did. Nor did the President ever pressure Ms. Currie to alter her recollection. Despite the prosecutor's best efforts to coax Ms. Currie into saying she was pressured to agree with the President, Ms. Currie adamantly denied it.

Let me quote just briefly a few lines of her grand jury testimony:

Question: Now, back again to the four statements that you testified the President made to you that were presented as statements, did you feel pressured when he told you those statements?

Answer: None whatsoever.

Question: That was your impression, that he wanted you to say—because he would end each of the statements with "Right?", with a question.

Answer: I do not remember that he wanted me to say "Right." He would say "Right" and I could have said, "Wrong."

Question: But he would end each of those questions with a "Right?" and you could either say whether it was true or not true?

Answer: Correct.

Question: Did you feel any pressure to agree with your boss?

Answer: None [whatsoever].

Now, to understand on a human level why the President reached out to Betty Currie on the day after his deposition, you need only to understand that he had just faced unexpected detailed questions

about his worst nightmare. As he candidly admitted to the grand jury, he had long feared that his relationship with Ms. Lewinsky would ultimately become public. Now, with questioning about her in the Jones case, publication of the first Internet article, the day of reckoning had arrived. The President knew that a media storm was about to erupt. And it did.

Now, if you are looking for evidence on which to base an inference about the President's intentions with respect to Ms. Currie's testimony, look what he said to her when he knew that she was going before the grand jury.

> And then I remember when I knew she was going to have to testify to the grand jury, and I, I felt terrible because she had been through this loss of her sister, this horrible accident Christmas that killed her brother, and her mother was in the hospital. I was trying to do—to make her understand that I didn't want her to, to be untruthful to the grand jury. And if her memory was different than mine, it was fine, just go in there and tell them what she thought. So, that's all I remember.

The President of the United States did not tamper with a witness.

Now next, the managers argue that Mr. Clinton corruptly encouraged Ms. Lewinsky to submit a false affidavit to the Jones lawyers and to lie if she were ever deposed. But the uncontroverted evidence refutes that charge. Indeed, Ms. Lewinsky herself has repeatedly and forcefully denied that anyone ever asked her to lie. There is no way to get around that flat denial, even with the independent counsel's addition of the word "explicitly." There was no explicit, implicit, or any other direction to Ms. Lewinsky to lie. Indeed, the only person to whom Ms. Lewinsky said anything inconsistent with her denial was the ubiquitous Ms. Tripp. And, as Ms. Lewinsky later told the grand jury:

> I think I told her that, you know, at various times the President and Mr. Jordan had told me I have to lie. That wasn't true.

Left with this record, the managers resort to arguing that Ms. Lewinsky understood that the President wanted her to lie, that he could not have wanted her to file an affidavit detailing their relationship. But the only factual support for this theory recited by the majority is the testimony of Ms. Lewinsky that, while the President never encouraged her to lie, he remained silent about what she should have to say or do, and by such silence she said, "I knew what he meant."

The very idea that the President of the United States should face removal from office, not because he told Monica Lewinsky to lie or anything of this sort, but because he was silent and Ms. Lewinsky "knew what he meant," is, I suggest, more than troubling.

So to bolster their flawed "I knew what he meant" theory, the managers assert that the President knew the affidavit would have to be false in order for Ms. Lewinsky to avoid testifying. But the evidence here, too, is that the President repeatedly testified that Ms. Lewinsky could and would file a truthful affidavit. And, of course, Ms. Lewinsky herself has made it clear that her definition of the critical term that might be used in such an affidavit was consistent with the President's.

Further testimony from Ms. Lewinsky herself repudiates any suggestion that she was ever encouraged by anyone to lie if she were deposed in the Jones case. In a colloquy with a grand juror,

she explicitly and unequivocally rejected the notion that President Clinton encouraged her to deny the relationship after she learned she was a witness. Referring to discussions about the so-called cover stories that the managers allege were to be used in her testimony, a grand juror asked her:

It is possible that you had these discussions after you learned that you were a witness in the Paula Jones case?
Answer: I don't believe so, no.
Question: Can you exclude that possibility?
Answer: I pretty much can.

The managers would have you conclude the contrary from a brief snippet of the conversation on December 17 in which Ms. Lewinsky said that at some point, "I don't know if it was before or after the subject of the affidavit came up, the President sort of said, 'Well, you know, you can always say you were coming to see Betty or that you were bringing me letters.'"

But Ms. Lewinsky told the FBI when she was interviewed, "To the best"—this is the FBI talking—"To the best of Miss Lewinsky's memory, she does not believe they discussed"—in this December 17 conversation—"the content of any deposition that Miss Lewinsky might be involved in at a later date." And she told the grand jury the same thing. Describing the very same December 17 conversation, she testified that she and the President did not discuss the idea of her denying their relationship.

Ms. LEWINSKY: I really don't remember it. I mean, it would be very surprising for me to be confronted with something that would show me different, but it was 2:30, and, I mean, the conversation I'm thinking of mainly would have been December 17, which was—
A juror interjects: The telephone call?
Ms. LEWINSKY: Right. And it was, you know, 2, 2:30 in the morning. And I remember the gist of it, and I really don't think so.

And it is on that basis that the managers suggest that the President obstructed justice.

Fourth, article II alleges that the President obstructed justice by denying to his closest aides he had a sexual relationship with Monica Lewinsky, the very same denial he made to his family and his friends and to the American people. These allegedly impeachable denials took place in the immediate aftermath of the public revelation of the Lewinsky matter, at the very time that the President was denying that relationship to the entire country on national television. Having made the announcement to the whole country, it is simply absurd, I suggest to you, to believe that he was somehow attempting corruptly to influence his senior staff when he told them virtually the same thing at the same time.

Now, the managers do not allege—as they could not—that the President attempted to influence the aides' testimony about what they themselves knew concerning his relationship with Ms. Lewinsky—had they seen her in a particular place; had they talked to her; had they talked to the President about it before all of this broke.

Indeed, the only evidence these aides had was the very same denial that the entire American people had. Indeed, every member of the grand jury had probably seen this denial by the President on their own television sets. Under the theory proffered by the managers, in essence, every person who heard the President's denial

could have been called to the grand jury and ordered to create still an additional charge of obstruction of justice.

The point here was not that the President believed that his staff would be witnesses and somehow wanted to influence their testimony. As he explained to the grand jury, what he was trying to do was avoid being a witness. But, of course, he had to say something to them. He had to say, in the aftermath of January 21, something to reassure them. And he told them exactly what he told every one of you, everyone in the gallery, and everyone who watched television in those days following January 21.

And let me just make this one point. There is absolutely no conflict in the evidence here, despite the managers' somewhat puzzling suggestion that the Senate's deliberations would somehow be aided if two of the senior staff members could be called as witnesses. Not only is there no conflict in the evidence, there is absolutely no basis for the charge that the President was in any way seeking to influence the testimony of his staff before the grand jury.

Now we come to the last of the obstruction charges. The managers ask you to find that the President of the United States employed his friend, Vernon Jordan, to get Monica Lewinsky a job in New York, to influence her testimony, or perhaps in a somewhat forlorn effort to escape the reach of the Federal Rules of Civil Procedure, to hide from the Jones lawyers and the 8 million people who live in that city.

There is, of course, absolutely no evidence to support this conclusion, and so the managers have constructed out of sealing wax and string and spiders' webs a theory that would lend to a series of otherwise innocuous and, indeed, exculpatory events, a dark and sinister past.

The undisputed record establishes the following: one, that Lewinsky's job search began on her own initiative; two, the search began long before her involvement in the Jones case; three, the search had no connection to the Jones case; four, Vernon Jordan agreed to help her, not at the direction of the President but at the request of Ms. Currie, Mr. Jordan's long-time friend; five, the idea to solicit Mr. Jordan's assistance again came not from the President but from Ms. Tripp.

As I thought about this aspect of it, I have to say I was reminded of Iago and Desdemona's handkerchief. But we will pass on that.

Both Ms. Lewinsky and Mr. Jordan have repeatedly testified that there was never an agreement, a suggestion, an implication, that Ms. Lewinsky would be rewarded with a job for her silence or her false testimony. As Mr. Jordan succinctly put it, "Unequivocally, indubitable, no."

It was only to appease Ms. Tripp that Ms. Lewinsky ultimately told her that she had told Mr. Jordan she wouldn't sign the affidavit until she had a job. But as she told the grand jury, "That was definitely a line based on something that Linda had made me promise on January 9."

Now while the managers dismiss as irrelevant Ms. Lewinsky's job search before December, the fact is, Ms. Lewinsky contemplated looking for a job in New York as early as July 1997, and her interest was strengthened in early October when Ms. Tripp told her it was unlikely she would ever get another job in the White House.

It was then Ms. Tripp and Ms. Lewinsky discussed the prospect of having Vernon Jordan help her get a job in New York and Ms. Lewinsky mentioned that idea to the President.

Later in October, as part of this ongoing search, Ambassador Richardson agreed to interview Ms. Lewinsky at the suggestion of then-Deputy Chief of Staff Podesta who had been asked to help by Ms. Currie. And Ambassador Richardson offered her a job and she had that job in hand throughout the supposedly critical December timeframe, didn't actually turn it down until early January. And, further, in late October or early November, she actually went to her boss at the Pentagon and asked for his help to find a job.

Meanwhile, now we come to what, for the managers, is the very heart of the case. On November 5, Ms. Lewinsky had a preliminary meeting with Mr. Jordan and they discussed a list of potential employers. And although the managers then contend that nothing happened from November 5, that first meeting, until December 11, signifying, as they see it, that it must have been Ms. Lewinsky's appearance on the witness list that galvanized Mr. Jordan into action, that is simply false.

Ms. Lewinsky had a followup telephone conversation with Mr. Jordan around Thanksgiving in which he told her he was working on the job search and he asked her to call him in the first week of December. The President learned Ms. Lewinsky was on the Jones witness list sometime on December 6. He met with Mr. Jordan the very next day, December 7. But oddly, if one adopts the managers' view, there was no discussion of Ms. Lewinsky or the Jones case, much less job searches. Then on December 8, Ms. Lewinsky called Mr. Jordan's office and made her appointment to meet with him on December 11.

Now the President absolutely had nothing to do with that call or that appointment and Mr. Jordan denies that there was any intensified effort to find Ms. Lewinsky a job. He said, "Oh, no, I do not recall any heightened sense of urgency in December, but what I do recall is that I dealt with it when I had time to do it."

Now for my second example of prosecutorial fudging. The managers have devoted much attention to the magic date of December 11, arguing vigorously that it was on that day that getting the job for Ms. Lewinsky suddenly became a matter of high priority for the President and hence to Mr. Jordan. Why is that so? Well, again, I will let the majority counsel for the Judiciary Committee tell you in his own words during his closing argument.

Again, you should have this before you if you can't see the chart.

But why the sudden interest, why the total change in focus and effort? Nobody but Bettie Currie really cared about helping Ms. Lewinsky throughout November, even after the President learned that her name was on the prospective witness list. Did something happen to move the job search from a low to a high priority on that day? Oh, yes, something happened. On the morning of December 11, 1997, Judge Susan Webber Wright ordered that Paula Jones was entitled to information regarding any State or Federal employee with whom the President had sexual relations or proposed or sought to have sexual relations. To keep Monica on the team was now of critical importance. Remember, they already knew that she was on the witness list, although nobody bothered to tell her.

That same theme was picked up last week by Mr. Manager HUTCHINSON, both in his recitation of events of that day and in the

exhibits he showed you. If I am lucky, we will place on the easel to my right the exhibit that Manager HUTCHINSON used.

You will see the order that this exhibit places on the critical events of November and December. November 5 meeting, the no-job-search action; the President receives a witness list. And then of special interest, December 11, first event, "Judge Wright order permitting questions about Lewinsky." Too, on December 11, the "President and Jordan talk about job for Monica."

Now, let me ask you to focus on what Mr. HUTCHINSON told you about the events of December 11. Sounding somewhat like majority counsel, he asks:

> And so, what triggered—let's look at the chain of events. The judge—the witness list came in, the judge's order came in, that triggered the President into action and the President triggered Vernon Jordan into action. That chain reaction here is what moved the job search along . . . remember what else happened on that day [December 11] again. That was the same day that Judge Wright ruled that the questions about other relationships could be asked by the Jones attorneys.

Now, it appears to me that the manager was suggesting—again, with not a great deal of subtlety—that Vernon Jordan, one of this country's great lawyers and great citizens, was prepared to perjure himself to save the President.

So let's just imagine the managers' examination of Mr. Jordan in this Chamber that would let you make your own judgment about his truthfulness.

Question: Mr. Jordan, isn't it a fact that you met with Ms. Lewinsky on December 11 to help get her a job?

Answer: Yes.

Question: And isn't it a fact that before and after you met with her, you made calls to potential employers in New York?

Answer: Yes.

Question: Isn't it true that the reason for all of this activity on December 11 was that Judge Wright had on that very day issued an order authorizing the Jones lawyers to depose certain women like Miss Lewinsky?

Answer: No.

Question: What do you mean "no"? Isn't it true that the judge had issued an order before you met with Ms. Lewinsky and before you made the calls?

Answer: I had no knowledge of any such order. The fact that Ms. Lewinsky was a potential witness had nothing to do with my helping. I made an appointment to see her 3 days earlier.

Question: Well, isn't it a fact that Judge Wright filed her order on December 11 before you met with Ms. Lewinsky?

Answer: Well, actually no.

Let me show you the official report of the judge's discussion with the lawyers in the Jones case on that date. You have this before you as well. There's a conference call between the judge and the lawyers, which is memorialized in a formal document prepared by a clerk and on file in the case in Arkansas. It notes that the conference call began at 5:33 p.m. central standard time. If I have my calculations right, that is 6:33 p.m. in Washington.

I want to stop here for a second so that you know where Mr. Jordan was when that happened. Let me see the next chart.

By the way, this is Mr. Jordan testifying:

I was actually on a plane for Amsterdam by the time the judge issued her order.

So he testified in the grand jury.

I left on United flight 946 at 5:55 from Dulles Airport and landed in Amsterdam the next morning.

So the conference call begins at 6:33 eastern standard time. The court takes up another variety of matters, and the judge didn't even tell the lawyers that she was going to issue an order on the motion to compel these various depositions until the very end of the call, around 7:45 eastern standard time, and the clerk would actually fax them a copy at that point.

So we return to Mr. Jordan's mythical testimony. To summarize, let me show you something that tells you what the real sequence of events was on December 11. Vernon Jordan makes a possible job call at 9:45, and another at 12:49, and another at 1:07; he meets with Ms. Lewinsky from 1:15 to 1:45; he gets on his plane at 5:55 in the afternoon, and an hour or so later the lawyers are informed that the judge had issued her order.

In fact—just as a little filler—the President is out of town and returns to Washington at 1:10 a.m. And actually, Judge Wright's order is filed not on the 11th, but on the 12th.

Question: Oh, I see. Well, never mind.

Now, do any of you think that you need to look Mr. Jordan in the eye and hear his tone of voice to understand that the prosecutors have it wrong and have had, at least since the majority counsels' closing argument?

You will also learn from us—but not from the managers—that Mr. Jordan placed no pressure on any company to give Ms. Lewinsky a job. Indeed, two other companies he called didn't even offer her a job.

Just as the managers dramatically mistake the record relating to Mr. Jordan's efforts to help Ms. Lewinsky find a job, so, too, do they invent a nonexistent link between a call Mr. Jordan made ultimately to Mr. Perelman, the CEO of MacAndrews and Forbes, Revlon's parent, and the offer Ms. Lewinsky finally received from Revlon with her signing of the affidavit in the Jones case. We will demonstrate beyond any question, once again, that conclusions the managers have drawn are simply false.

Again, I'll begin with the fact that both Mr. Jordan and Ms. Lewinsky testified that there was no such link between the job and the affidavit, and the only person to ever suggest such a link was, once again, Ms. Tripp. Now, I presume that it is not the managers' intention to suggest that we bring Ms. Tripp before you to explore her motivation for making that suggestion.

Next, take Ms. Lewinsky's interview with a MacAndrews official, which she described as "having gone poorly"—a characterization adopted by the managers for obvious reasons—because it suggests that there was a desire on their part to heighten the supposed relevance of the call Mr. Jordan made to Mr. Perelman. In other words, under their theory, Ms. Lewinsky's job prospects at MacAndrews and Forbes, or Revlon, were caput until Vernon Jordan made the call and resurrected her chances.

Unfortunately, like so much of the obstruction case, the facts do not bear out this convenient theory. In fact, the man who inter-

viewed Ms. Lewinsky at MacAndrews was impressed with her, and because there was nothing available in his area, he sent her resume to Revlon where she was hired by someone who did not know about Mr. Jordan's call to Mr. Perelman.

So much for obstruction by job search.

That, then, is an overview of the charges contained in these articles. You will hear about them in greater detail than I could offer you today when my colleagues speak in the next two days. I want to bring my presentation to a close.

We are not here to defend William Clinton, the man. He, like all of us, will find his judges elsewhere. We are here to defend William Clinton, the President of the United States, for whom you are the only judges. You are free to criticize him, to find his personal conduct distasteful; but ask whether this is the moment when, for the first time in our history, the actions of a President have so put at risk the Government the framers created that there is only one solution. You must find not merely that removal is an acceptable option, that we will be OK the day after you vote; you must find that it's the only solution, that our democracy should not be made to sustain two more years of this President's service. You must put that question because the one thing that our form of Government cannot abide is the notion that impeachment is merely one more weapon a Congress can use in the process between the legislative and executive branches.

Let me be very clear. We do not believe that President Clinton committed any of the offenses charged by the managers. And for the reasons we will set out at length over the next two days, we believe the managers have misstated the record, have constructed their case out of tenuous extrapolations, without foundation, and have at every turn assumed the worst without the evidence to support this speculation.

You put these lawyers in a courtroom and they win 10 times out of 10.

But suppose we are wrong. Suppose that you find that the President committed one or more of the offenses charged. Then there remains only one issue before you. Whatever your feelings may be about William Clinton, the man, or William Clinton, the political ally or opponent, or William Clinton, the father and husband, ask only this: Should William Clinton, the President, be removed from office? Are we at that horrific moment in our history when our Union could be preserved only by taking the step that the framers saw as the last resort? I am never certain how to respond when an advocate on the other side of a case calls up images of patriots over the centuries sacrificing themselves to preserve our democracy. I have no personal experience with war. I have only visited Normandy as a tourist. I do know this: My father was on the beach 55 years ago, and I know how he would feel if he were here. He didn't fight, no one fought, for one side of this case or the other. He fought, as all those did, for our country and our Constitution. As long as each of us—the managers, the President's counsel, the Senators—does his or her constitutional duty, those who fought for the country will be proud.

We, the people of the United States, have formed a more perfect Union. We formed it. We nurtured it. We have seen it grow. We

have not been perfect. And it is perhaps the most extraordinary thing about our Constitution—that it thrives despite our human imperfections.

When the American people hear the President talk to Congress tonight, they will know the answer to the question, "How stands the Union?" It stands strong, vibrant, and free.

I close as I opened 2 hours ago, or 2½ hours ago. William Jefferson Clinton is not guilty of the charges that have been brought against him of committing perjury. He didn't obstruct justice. He must not be removed from office.

Thank you.

The CHIEF JUSTICE. The Chair recognizes the majority leader.

RECESS

Mr. LOTT. Mr. Chief Justice, in a moment the Senate will recess until 8:35 this evening, at which time the Senate will proceed as a body over to the House of Representatives as a joint session to receive a message from the President. Following the joint session, the Senate will adjourn until 11 o'clock tomorrow morning.

The Leader's Lecture Series is scheduled for tomorrow evening at 6 o'clock in the Old Senate Chamber with former President George Bush as guest speaker.

I now ask that the Senate stand in recess under the previous order.

There being no objection, the Senate, at 3:33 p.m., recessed until 8:35 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. CRAPO).

OPENNESS ON THE IMPEACHMENT TRIAL

Mr. FEINGOLD. Mr. Chief Justice, I rise today in strong support of opening Senate deliberations to the public during the course of the impeachment trial against President Clinton. I will therefore support the motion to be offered by Senators HARKIN and WELLSTONE to suspend the rules in order to open these proceedings to public scrutiny.

In this trial, the U.S. Senate is charged by the Constitution with deciding whether to remove from office a President twice elected by the American people. Although I am certain that every member of the Senate will undertake this Constitutional responsibility with the utmost gravity and perform "impartial justice" as our oath commands, I am concerned that the American people will be shut out of this process at some of its most crucial moments.

America's great experiment in democracy trusts the people to elect a President in a process that consists of months of public discussion, primaries, caucuses, debates, and finally an election open to everyone who chooses to participate. In stark contrast, the Senate's rules preclude the public from seeing its deliberations on whether an impeachment case will be dismissed, whether witnesses will be called or further evidence introduced, and even the ultimate debate regarding the guilt or innocence of the President. In short, Mr. Chief Justice, the Constitution trusts the people to elect a President, but our current Senate impeachment rules do not

trust them to have even the most passive involvement in our deliberative process, even when the debate might result in overturning the people's judgment in a national election.

Let me take a moment to describe again for my colleagues how our current impeachment rules work. The Senate is not only the trier of fact in this case, but it also acts as the ultimate arbiter of law. It can overturn the Chief Justice's rulings on evidentiary questions and make decisions, which cannot be appealed to any court, on motions. But the Senate's impeachment rules, which were first drafted in connection with the Andrew Johnson impeachment and most recently revisited in 1986, do not permit the Senate to debate any of the decisions that it must make, except in closed session. In fact, the rules provide that decisions on evidentiary rulings are to be made with no debate whatsoever.

Other motions can be debated, but only in private. So, for example, we expect that after the presentations are made on both sides, a motion will be made to dismiss the case against the President. Under our current rules, the House managers and the President's lawyers will argue that motion, but the Senate cannot debate it in open session. In fact, if a majority of the Senate wants to preclude debate entirely, it can do that by simply voting against a motion to take the Senate into private session for deliberations. Thus, before we vote on what could be a dispositive motion in this case, our only options are to discuss it behind closed doors or not discuss it at all.

I think this is wrong. We need a chance to debate this motion as Senators. I want to hear from my colleagues before I vote, not just afterward on television. I intend to carefully and respectfully entertain my colleagues' arguments, and I refuse to rule out the possibility that a well-reasoned argument offering a different perspective will influence my decision. But the American people also deserve to hear what we say to each other as we debate this motion. I see little to be gained from closing these deliberations and much to be lost. We must do everything we can to ensure public confidence in our fairness and impartiality. How can we expect the public to have faith in us if we close the doors at the very moment when we finally will speak on the dispositive questions of this historic trial?

Opponents of openness argue that in the only Presidential impeachment trial in our Nation's history, that of Andrew Johnson, the Senate's deliberations were closed. While it may be tempting to rely on the precedent of the one previous Presidential impeachment trial, which occurred one hundred and thirty years ago, I believe we should take a fresh look at this issue. In particular, we should consider how drastically the rules of the Senate and the composition of the Senate have changed.

The Senators who presided over President Johnson's impeachment were not elected by the American people directly, but were chosen by the various State legislatures, and thus were not directly responsive to the popular will. Today, we as Senators represent the citizens of our state directly and we are accountable to them at the ballot box. Furthermore, until 1929, the Senate debated nominations and treaties in closed sessions; and until 1975, many committee sessions took place in private. Today, all of our proceedings

are open to the public, except in rare cases involving national security. The rules governing membership in the Senate as well as the openness of Senate proceedings have consistently evolved throughout our history toward greater public involvement. The rules governing impeachment trial deliberations must move in that direction as well.

Opening these proceedings as Senators HARKIN and WELLSTONE have proposed will make the American public feel more involved in the process. With the percentage of voters who cast their ballot on election day declining in each succeeding election and polls showing that the public feels increasingly alienated from the political process; and with people openly questioning the relevance of their elected representatives and the Congress as a whole to their daily lives, we must lay open to the American people our deliberations on the most crucial decision short of declaring war that the Constitution ultimately entrusts to us. Democracy can only flourish when the people feel that they have a stake in the process. Conducting our impeachment deliberations in private sends the message that when the really important decisions need to be made, the American public is not welcome to observe. This is precisely the wrong message to send.

Thus far in the impeachment process, there has been little to celebrate. Most Americans have concluded that the House of Representative's inquiry was plagued by partisanship. Many fear that the Senate will do the same. With the eyes of the country upon it, the Senate has an opportunity to restore America's trust in the constitutional process. Open deliberations will enhance the public's understanding and discussion of this case. It may even serve to chip away some of the pervasive cynicism in our country as Americans watch how their elected representatives conduct themselves during consideration of the articles. I trust that my colleagues will reach their decisions on the merits after careful, reasoned and informed consideration of the evidence and the arguments presented. If my trust in my colleagues is justified, our deliberations will be thoughtful, high-minded, vigorous, and non-partisan. And if we have that deliberation in the open, it will be remembered as one of the Senate's finest hours.

WEDNESDAY, JANUARY 20, 1999

[From the Congressional Record]

OPEN SENATE DELIBERATIONS

Mr. HARKIN. Mr. Chief Justice, I take the floor today with my colleague and friend from Minnesota, Senator WELLSTONE, to speak about an issue that is going to be coming up here in the next several days that is going to have an importance to all of the American people and, indeed, to future generations. That is the issue of whether or not the Senate, in its deliberations on the impeachment of President Clinton, will do it in secret or will do it in public; will do it behind closed doors, behind a curtain of secrecy, or do it openly so that the American people know what we are doing. I want to take just a few minutes to lay out the case for why I believe it should be open.

Last week, Mr. Chief Justice, I raised an objection during the trial to the continued use of the word "jurors," as it pertains to Senators sitting in a Court of Impeachment. I did that for a number of reasons, because we are not jurors. We are more than that. We are not just simply triers of fact. We are not just simply finders of law. But sitting as a Court of Impeachment, we have a broad mandate, an expansive role to play. We have to take everything into account, everything from facts—yes, we have to take facts into account—we have to take law into account, but we also have to take into account a broad variety of things: how the case got here; what it is about; how important it is; how important is this piece of evidence weighed against that; what is the public will; how do the people feel about this; what will happen to the public good if one course of action is taken over another. These are all things we have to weigh, and that is why I felt strongly that Senators, in our own minds and in the public minds, should not be put in the box of simply being a juror.

One other aspect of that is if, in fact, we are jurors, the argument went, then juries deliberate in secret and, therefore, if we are a jury, we should deliberate in secret. Now that we know we are not jurors, I believe that argument has gone away. I believe that we are, in fact, mandated by the Constitution to be more than that.

I paraphrase an article that appeared in the Chicago Tribune by Professor Steven Lubet—he is a professor of law at Northwestern University—in which he pointed out that the Constitution does not allow us the luxury of being simply jurors. We have to decide; we have to judge.

I ask unanimous consent that Mr. Lubet's article be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Chicago Tribune, Jan. 13, 1999]

STOP CALLING THEM JURORS

(By Steven Lubet)

Some day soon, the actual impeachment trial of William Jefferson Clinton will begin, with 100 United States senators sitting in judgment. The senators, in anticipation of the event, keep referring to themselves as a jury. On a recent edition of "Larry King Live," for example, no fewer than six of them (three Republicans and three Democrats) virtually chanted the mantra that it was their duty to act as "impartial jurors." It is tempting to agree.

After all, they have been sworn to do justice, they are going to consider evidence and the resulting verdict must be either conviction or acquittal.

But in fact, the senators are not jurors, and the repeated use of that term is dangerously misleading.

In an ordinarily trial, the decision-making responsibility is divided between judge and jury. The judge makes rulings of law, while the jury's function is severely limited to determination of facts. In other words, the jury only decides "what happened" while the judge decides almost everything else. That is not the case with impeachment. Article I of the Constitution confers on the Senate the "sole power to try all impeachments." That power is comprehensive—including law, facts and procedure—and it is to be exercised in its entirety by the Senate itself.

(It is true that the chief justice is called upon to "preside" over presidential impeachments, but only because the vice president—who is ordinarily the Senate's presiding officer—is disqualified by an obvious conflict of interest. The chief justice does not sit as a judge in any ordinary sense, but more as a moderator or chair. He holds no binding legal or decisional power.)

And if there were any doubt, Article III of the Constitution actually makes this explicit, providing that "the trial of all crimes, except in cases of impeachment, shall be by jury." So, what are the senators, if not jurors? In fact, they are all judges, or if you prefer, members of the court of impeachment, each one delegated full power to decide every issue involved in the case.

This distinction is crucial. President Clinton's most fervent detractors have argued that the House of Representatives, in exercise of its own constitutional power, has conclusively determined the "impeachability" of the alleged offenses, leaving the senatorial jury the limited task of deciding whether the charges are true. But that is wrong. The Senate's role is not at all confined to the ascertainment of facts. Under the Constitution, the senators need not—they may not—defer to the House of Representatives on the critical question of "impeachability."

Thus, the Senators must decide not only whether Clinton lied to the grand jury, but also whether so-called "perjury about sex" constitutes a high crime or misdemeanor of sufficient gravity to justify removing this president from office.

It is easy to understand why a senator would want to be a juror. The persona is so engaging: modest, contemplative, nearly anonymous—the humble citizen called to civic duty. But the constant references to senators-as-jurors can only serve to diminish their role and distract them from the expansive nature of their duty. It is not their job, as it would be a jury's, simply to decide some facts and then move on. The Constitution does not allow them that luxury.

The senators are not determining just one case; their concern must be far greater than the fate of a single man. Rather, they are setting a legal and political precedent that may well guide our Republic for the next 130 years. Future generations will look back upon this Senate for direction whenever potential impeachments arise. Our descendants will not want to know only what happened, but also what principles govern the removal of the president. And so, the senators cannot merely decide—they have to judge.

Mr. HARKIN. Mr. Chief Justice, a couple of other things regarding openness. The hallmark of our Republic and of our system of government is openness and transparency. The history of this Senate has been one of opening the doors. The first three sessions of the U.S. Senate were held in secret behind closed doors, the whole sessions. Up until 1929, all nominations and treaties were debated behind closed doors. In 1972, 40 percent of all the committee meetings were done behind closed doors. In fact, up until 1975, many conference committees, and still committee meetings, were held behind closed doors.

We have washed all that away. We have found through the years that the best political disinfectant is sunshine. I believe we are a better Senate, a better Congress and a better country for opening the doors and letting people see what we do and how we reach the decisions we reach.

Mr. Chief Justice, there has been a spate of editorials recently regarding opening up the trial. I quote one from the Washington Post dated January 14. It says:

It seems only right . . . that the Senate should be expected to debate in public any charge for which it is demanding of the president a public accounting.

This is not to prevent senators from caucusing in private or even meeting unofficially, as senators did last week in crafting the procedural compromise that will govern the trial. Confidential contacts of this sort can certainly be constructive. But when the Senate meets as the Senate and considers arguments in its official trial proceedings, it should not do so behind closed doors. Absent the most unusual of circumstances, it should conduct its deliberations openly, thereby ensuring that the final adjudication of Mr. Clinton's case is as transparently accountable as possible.

The New York Times basically said the same thing. The Los Angeles Times, the Des Moines Register and Roll Call. I think Roll Call basically said it best when they said:

. . . this is not a court trial. . . . It is inherently a political proceeding. . . . Their constituents [our constituents], the citizens of America, have a right to see

how they perform and to fully understand why they decided to retain or remove their elected President.

I ask unanimous consent that all of these editorials be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Washington Post, Jan. 14, 1999]

AN OPEN TRIAL

Sens. Tom Harkin (D–Iowa) and Paul Wellstone (D–Minn.) have announced that they will move to suspend certain portions of the Senate's impeachment rules to permit the full Senate trial of President Clinton to be conducted in the public's view. As the more than 100-year-old rules stand now, testimony can be taken with the cameras on and the doors open unless a majority votes to close the session, but any time the senators debate a motion and, for that matter, when they consider the final articles, they will do so in secret. This is exactly the wrong way to conduct a trial whose purpose is to pass public judgment on the conduct of the president. The Harkin-Wellstone proposal to do the whole trial in public offers a far better approach.

The desire to avoid public argument is understandable, particularly in a case as filled with salacious material as the Clinton trial must necessarily be. But it is not the job of the Senate to protect citizens from the rationale for the Senate's actions, nor are senators entitled to be shielded from the embarrassment of discussing out loud the tawdry evidence at issue in this case.

The often drawn analogy between senators and jurors, whose deliberations are kept secret, also fails to offer a persuasive reason to conduct secret debates. Jurors, after all, did not seek public office and are not permitted, as their trials are progressing, to go on talk shows to discuss their own consideration of the evidence. The senators are, in this proceeding, acting as far more than simple jurors, and it makes little sense for this most solemn obligation of the Senate to face less sunshine than does a routine legislative matter. It seems only right, rather, that the Senate should be expected to debate in public any charge for which it is demanding of the president a public accounting.

This is not to prevent senators from caucusing in private or even from meeting unofficially, as senators did last week in crafting the procedural compromise that will govern the trial. Confidential contacts of this sort can certainly be constructive. But when the Senate meets as the Senate and considers arguments in its official trial proceedings, it should not do so behind closed doors. Absent the most unusual of circumstances, it should conduct its deliberations openly, thereby ensuring that the final adjudication of Mr. Clinton's case is as transparently accountable as possible.

[From the New York Times, Jan. 13, 1999]

OPEN THE SENATE

Since the trial of President Andrew Johnson in 1868, the Senate has conducted its debates on procedures and even the final verdict of impeachments in closed session. The time has come for that tradition to be altered, at least for the trial of President Clinton. Two Democratic Senators, Tom Harkin and Paul Wellstone, have announced that they will seek to change the rule on closed debates after the opening presentations begin tomorrow. Whatever would be gained by allowing senators to deliberate privately, the overriding requirements is for the American public to see and judge firsthand whether justice is being done.

Some senators argue that the closed session last Friday, at which Democrats and Republicans worked out a compromise on trial procedures, showed that privacy can serve a constructive purpose. But the Harkin-Wellstone proposal would not preclude the Senate's adjourning and meeting outside the chamber at caucuses like the one last week. The principle that should prevail is simply that proceedings that could lead to the removal of a President should be conducted in open session, especially since many Americans have questions about the fairness of the House impeachment proceedings. Closing the Senate's deliberations on so grave a matter would undermine public confidence and be an affront to citizens' rights to observe the operations of government.

Senators love their customs and ceremonies, but their institution's commanding trend has been toward openness. At the time of the nation's founding, all Senate sessions were closed. Until 1929, the Senate debated nominations and treaties in closed sessions. Until the reforms of the 1970's, many Congressional hearings and meetings were in closed session. No one would seriously argue that these old practices should have been preserved. As for impeachment trials, it is worth noting that they were open most of the 19th century. Privacy was adopted only for the trial of President Johnson.

Some senators seem to believe that they should be regarded as jurors in a trial, and therefore allowed a measure of confidentiality. But the senators have privileges not available to regular juries. They may ask questions, speak publicly about the process and make motions. It is within their power to change the rules on closing the session, which would take a two-thirds majority to be adopted. If openness drives senators toward partisanship or prolixity, as some fear, let public scrutiny serve as the governor on their excesses.

[From the Los Angeles Times, Jan. 13, 1999]

KEEP TRIAL FULLY OPEN

Unless the Senate changes one of its rules for conducting President Clinton's impeachment trial, the public will not be allowed to witness crucial parts, including a possible climactic debate on whether to convict Clinton on charges of perjury and obstruction of justice. The Senate should change this archaic rule; the trial's inestimable national importance demands that the proceedings be completely open.

For guidance in the trial, which opens Thursday, the Senate is relying on rules adopted in 1868, when Andrew Johnson became the first and until now the only president to be tried for alleged high crimes and misdemeanors. One of those rules compels "the doors to be closed" whenever senators debate among themselves, something they are allowed to do only when deciding procedural issues—such as whether witnesses should be called—or when they reach a verdict. Otherwise, by the rules of 1868, the senators must sit in silence as House prosecutors present the case against Clinton and White House lawyers defend him. Any questions the senators have must be submitted in writing to the chief justice, who may or may not choose to ask them.

The precedents embedded in the Johnson trial rules should not be put aside lightly. Without them the Senate could find itself mired in prolonged and divisive arguments over how to proceed. But no precedent is sacred. Times change and rules must change with them. Congress has many times discarded procedures and traditions that came to be seen as inimical to the need for free discussion in an open society. For example, as Sens. TOM HARKIN (D–Iowa) and PAUL WELLSTONE (D–Minn.) note, in the earliest days of the republic all of Congress' proceedings were secret. Until 1929 nomination hearings were conducted behind closed doors. Until 1975 many committee sessions similarly took place outside public scrutiny.

The Senate of Andrew Johnson's day was a far different place from the Senate of today. Its members were not chosen by the electorate—that did not come until 1913—but rather were appointed by state legislatures and so were not directly answerable to the popular will. And much of the Senate's business was routinely conducted in secret.

Today, except when matters of national security are being discussed, Congress' sessions are open—in the sunshine, as they say in the Capital. If ever there was an occasion when the sun should be allowed fully to shine in, it is in the Clinton impeachment trial.

A two-thirds vote is needed to change Senate rules. HARKIN and WELLSTONE, the major proponents of full openness, know the difficulty of getting 65 colleagues to agree with them. But they are leading a fair and just cause. Put simply, Americans have a right to witness this process in all its facets. The people's representatives in the Senate now have the responsibility to assure that right.

[From Roll Call, Jan. 14, 1999]

NO SECRET TRIAL

Imagine the spectacle. On, say, March 5, cameras are turned on in the Senate and the roll is called on the articles of impeachment against President Clinton. The votes are taken, the decision is made—and then there is a mad rush for Senators

to explain why they voted as they did. But their actual deliberations prior to the voting remain secret.

There is not even an official record kept, so reconstructing one of the most portentous debates in American history depends on the memories and notes of Senators and staffers.

This secrecy scenario is exactly what's in store unless the Senate changes its rules, as proposed by Sens. Tom Harkin (D-Iowa) and Paul Wellstone (D-Minn.), to open the impeachment trial to the media and the public.

In fact, it will take strong action from Senate leaders to open the trial, since changing Senate rules requires a two-thirds vote. We urge Democratic and Republican leaders to exercise their influence to prevent their institution from being accused of conducting a "secret trial."

The allegation could turn out to be true. Senate rules call not only for final deliberations on impeachment to be conducted in secret, but any deliberations. This means that motions to dismiss the case and consideration of whether to call witnesses might be done in secret and with no subsequent printing of the proceedings in the Congressional Record. All but arguments by House managers and the President's lawyers, witness testimony, if any, and the actual vote could take place behind a shroud.

Some Senators say they would not have been able to reach their bipartisan agreement on procedure last Friday if the session had been open. If statesmanship requires secrecy—which we doubt—then arrangements can be made for informal closed discussions. But all substantive discussions should be open. We have some sympathy for the view that some subject matter conceivably could be so sexually explicit that Senators will be ashamed to be seen discussing it in public. But it's not worth closing off almost the entire Clinton trial over this possibility.

Conceivably—if this is what it takes to sway skittish Senators—the rules could be altered to permit some discussion to be held in closed session with a record kept. But the House debate on impeachment could have been rated PG–13, and let's face it: The Clinton case record is already so raunchy that there's little that schoolchildren haven't already heard. So the proceedings ought to be open.

It will be argued: In court trials, jury deliberations are conducted in secret. But this is not a court trial. It is inherently a political proceeding. The "jurors" are not ordinary citizens unused to the glare of publicity. They will be up for reelection and judged partly on the basis of how they handle this case. Their constituents, the citizens of America, have a right to see how they perform and to fully understand why they decided to retain or remove their elected President.

Mr. HARKIN. Mr. Chief Justice, let me take off a little bit on one aspect of this. Some people say, "Well, there is a benefit to Senators meeting quietly, privately to discuss these." I believe that, and I would not, in any way, want to close, for example, some of the caucuses that we have—the occupant of the Chair remembers we had the closed caucus between the two parties to reach an agreement under which we are operating. I think there is a benefit to that, as the Washington Post article pointed out. That is fine, as we meet unofficially off the floor amongst ourselves to discuss things. But when the Senate meets as the Senate, as soon as that opening prayer is given by the Chaplain, this place should be open, and the trial should be open.

Next, I believe that unless we open this trial up, we are going to sow the seeds of confusion, misinformation, suspicion and unnecessary conflict. Here is why I say that. As some wag once said, there is nothing secret about any secret meeting held here in Washington.

Think, if you will, of a closed session of the Senate. The galleries are cleared, the cameras are shut off, reporters are gone, and we engage in debate on whatever issue we are going to debate. The debate is over. We open the galleries again, and 100 Senators rush out of here and they see all the reporters standing out here.

What happens? "Well, what happened, Senator?"

"Well, don't quote me, not for attribution, but guess what this Senator said; guess what that Senator said?"

And so you get 100 different versions of what happened here on the Senate floor.

I believe that will sow a lot of confusion, misinformation and unnecessary conflict. If the doors are open and if we debate in the open, there is no filter, it is unfiltered, and the public can see how and why we reached the decisions we reached.

The press, quite frankly, obviously, as perhaps is their nature, is quick to pick up on conflict and rumor. I believe if we follow the rules to close the doors of this trial it will turn it more into a circus than anything else. If we open the debate, I don't believe we will have any problems.

I was interested in an op-ed piece that was in the New York Times by former Senator Dale Bumpers. I read it, and there is a part in there I think really hits home. Former Senator Bumpers said:

> In a visit with Harry Truman in his home in Missouri in 1971, he admonished me to always put my trust in the people. "They can handle it," he said.

"They can handle it." I believe the American people can handle it, too. I believe they can handle any debate, any discussion, any deliberation that we have on the Senate floor. Not only can they handle it, I believe they have a right to it.

So Senator WELLSTONE and I will, at the first opportunity, when the first motion is made to dismiss the case, if that motion is made—obviously the debate about that under the rules would be held in secret—we intend at that point to offer a preferential motion that the debate, the discussion in the Senate on the motion to dismiss be held openly, to suspend the rules.

Obviously, that is a hurdle. To suspend the rules requires a two-thirds vote. It means that two-thirds of the Senate would have to vote to suspend the rules. As a further kind of anomaly, the motion to open up the Senate, to open up our debate and deliberation, the debate on that has to be held in private under the rules, strange as it may seem. And so we will at that point ask unanimous consent that the debate and discussion on whether we will open up the debate on the motion to dismiss be held openly. Of course, one Senator can object, and then we would have to go into a secret debate on our motion to open up the deliberation and the debate. And so that will happen sometime soon.

Another issue has been raised, Mr. Chief Justice—I would just like to cover it and then I am going to yield the floor to Senator WELLSTONE. The point has been raised, well, you know, if Senators start debating this and it gets in the open, then they get in front of the cameras, and, why, then this thing can go on and on and on because Senators—you know, we Senators like to talk, we can talk forever. Under the rules of the Senate, when we go into debate and deliberation on any motion, each Senator can be recognized only for 10 minutes—only for 10 minutes. And I think a lot of people are forgetting about that.

Lastly, I remember in January of 1991 when I sat at the desk on that side over there and Senators had just been sworn in; housekeeping motions were being made. One motion was being made by the majority leader at that time that the Senate recess or

adjourn—I forget—adjourn to a date certain—I think it was for the State of the Union—but during that period of time, that we would not have been in session, and the time would have run out on whether or not we would use force to get the Iraqis out of Kuwait, the gulf war.

I stood at that time and raised an objection to the Senate recessing or adjourning over to that point. And I raised an objection that enabled us to have an open and public debate on whether or not we would authorize the President of the United States to conduct military operations in the gulf. We had that debate. And I think it was one of the Senate's finest hours. Even those with whom I disagreed I thought were eloquent and forceful in their arguments. We had the debate, we had the vote, and then we moved on. And I think the American people were better for that debate because it was held in the open.

Mr. Chief Justice, if we in the Senate can debate whether or not to send our sons and daughters off to distant lands to fight and die in a war—something that touches every single American citizen—if we can debate that in open and in public, then in the name of all that is right about our Republic and our country and our openness and our system of government, why can we not debate and deliberate in the open something else that touches every American citizen? And that is, why or if the President of the United States should or should not be removed from office. If we can debate it openly, the issue of war, then certainly we can debate an issue in the open, the issue of whether or not the President would be removed from office.

I yield the floor.

Mr. WELLSTONE. Mr. Chief Justice, let me, first of all, thank my colleague, Senator HARKIN. We have been working very hard on this. There are other Senators who support this motion—Senator LEAHY, Senator FEINGOLD, Senator BOXER, and Senator LIEBERMAN. And I know Senator HUTCHISON has indicated interest in this question. This will be a very important vote coming up next week.

First, let me just, if I could, say that I feel very honored to be speaking from Dale Bumpers' desk. I don't think there is anybody who could match his oratory, but I am sure lucky to have this desk and this long cord. And Dale Bumpers, wherever you are, I will do my very best to try to carry on in your tradition, or at least give it everything that I have.

Mr. Chief Justice, next week before the Senate goes into its own deliberations on this question of whether to dismiss charges, we will take this one step at a time. We most definitely will try to move forward with a motion to suspend the rules so that the Senate deliberations will not be in closed session. We also would like to make sure that the very debate as to whether our deliberations are in closed session or secret session be open to the public. And we will, on the floor of the Senate, make every effort possible to keep that debate in the open.

I am going to be very brief and just make the following arguments because there are some very, very good people who do a lot of work when it comes to interpretation of the rules. I will say, since the Parliamentarian is here, that Bob Dove has been emi-

nently fair. He has treated all of us from both political parties with the utmost respect.

My own feeling about this is that this trial has been momentous. I personally wish that it had not come over from the House. I have always made my point that I believe the House overreached on the impeachment charges. But they are here in the Senate.

I think here are the following questions: If in fact we as a Senate are going to go into deliberations over whether to dismiss the charges against the President, or later on whether we will have witnesses, or later on whether the President shall be removed, I cannot imagine that the U.S. Senate would go into closed session. I cannot imagine that our deliberations and our debate and the arguments we make would not be open to the public.

The public isn't going to believe in this political process if we go into secret or closed session. The public is not going to have trust in what we are doing if they don't get a chance to evaluate our debate and what we are saying and why we reached the conclusions we reached.

I really do believe that if there is to be healing in our country—and I certainly pray that there will be—it would be a terrible mistake for the U.S. Senators, Democrats or Republicans, to cut the public out. The part of the public that is looking at the proceedings right now, that is evaluating the arguments that are being made—and there are people who have made very good arguments on both sides of the question—to then say to them, "Listen, when it comes to now the Senate, the U.S. Senate, going into our own deliberations and making our own decisions, you, the public, you're cut out of it," this goes against the very essence of accountability. It goes against the very essence of what a representative democracy is about.

Some of these rules go back to 1868. That was a time when the U.S. Senators were not even directly elected. They were elected by State legislatures. The 17th amendment changed all that in 1913 as part of the Progressive movement and the progressive change in the country. The idea was that the U.S. Senators would be a part of representative democracy, directly elected by the people, accountable to the people.

This is a huge decision we are going to be making in the U.S. Senate. And I think it will be a terrible mistake for the U.S. Senate to go into closed session, to cut the public out, to not let people have the opportunity to hear what we are saying in the debate.

It is really quite amazing, if you think about it. People will know what our votes are—dismissal of charges, witnesses, whether the President should be removed from office—and somewhere there will be a transcript of the proceedings, but I don't think they will even be published. There will not even be a public record of what U.S. Senators—the Senator from Arkansas or the Senator from Minnesota or the Senator from Iowa—had to say in this debate.

I just say to all of my colleagues, I hope that, No. 1, you will agree to a unanimous-consent agreement that in our discussion or our debate whether or not we go into closed session, that it be open to the public. What an irony it would be if, in the very debate about whether or not our deliberations will be open or closed, our

deliberations were closed. It seems to me that debate ought to be open to the public.

Second, I certainly hope that we will have the two-thirds vote that it will take to suspend the current rule that says we must be in closed session.

Mr. Chief Justice, I think it is important for the public right now to be engaged in this process. I hope people will be calling their Senators, because I really do believe that part of our deliberations, part of our modus operandi as Senators, whatever States we represent, should be to stay in touch with people. Of course, we reach our own independent judgment. We reach our own independent judgment about the facts, about the charges.

Then there is another question, the threshold question, about whether or not these charges rise to the level of removing a President from office.

I think part of what we are about as Senators is to try to stay in close touch with the public, with people in our States, whatever decision we make. It can be a matter of individual conscience, but I think it is terribly important that we operate as a representative body, as the U.S. Senate, as a part of representative democracy of the United States of America. We can't on this question, we can't on these questions, if we go into closed session.

RECESS

Thereupon, the Senate, in legislative session, recessed until 1:05 p.m.; whereupon, the Senate, sitting as a Court of Impeachment, reassembled when called to order by the Chief Justice.

TRIAL OF WILLIAM JEFFERSON CLINTON, PRESIDENT OF THE UNITED STATES

The CHIEF JUSTICE. The Senate will convene as a Court of Impeachment. The Senators may be seated, and the Deputy Sergeant at Arms will make the proclamation.

The Deputy Sergeant at Arms, Loretta Symms, made proclamation as follows:

Hear ye! Hear ye! Hear ye! All persons are commanded to keep silent, on pain of imprisonment, while the Senate of the United States is sitting for the trial of the articles of impeachment exhibited by the House of Representatives against William Jefferson Clinton, President of the United States.

The CHIEF JUSTICE. The majority leader is recognized.

Mr. LOTT. Mr. Chief Justice, it is my understanding that the White House counsel presentation today will last until sometime between 5 and 6 o'clock.

I have been informed that Mr. Greg Craig and Ms. Cheryl Mills will be making today's presentations. As we have done over the past week, we will take a couple of short breaks during the proceedings. I am not exactly sure how we will do that. We will keep an eye on everybody, the Chief Justice, and counsel. I assume that after about an hour, hour and 15 minutes, we will take a break; then we will take another one in the afternoon at some point so we will have an opportunity to stretch.

I remind all Senators, again, to remain standing at your desks each time the Chief Justice enters and departs the Chamber.

As a further reminder, on a different subject, the Leader's Lecture Series continues tonight, to be held at 6 p.m. in the Old Senate Chamber. Former President George Bush will be our guest speaker.

I yield the floor, and I understand that Counsel Greg Craig is going to be the first presenter.

THE JOURNAL

The CHIEF JUSTICE. The Journal of the proceedings of the trial is approved to date.

Pursuant to the provisions of Senate Resolution 16, counsel for the President have 21 hours 45 minutes remaining to make the presentation of their case. The Senate will now hear you.

The Chair recognizes Mr. Counsel Craig.

Mr. Counsel CRAIG. Mr. Chief Justice, ladies and gentlemen of the Senate, distinguished managers from the House, good afternoon. My name is Greg Craig and I am special counsel to the President. I am here today on behalf of President Clinton. I am here to argue that he is not guilty of the allegations of grand jury perjury set forth in article I.

I welcome this opportunity to speak for President Clinton. He has a strong and compelling case, one that is based on the facts in the record, on the law, and on the Constitution. But first and foremost, the President's defense is based on the grand jury transcript itself. I urge you to read that transcript and watch the videotape. You will see this President make painful, difficult admissions, beginning with his acknowledgment of an improper and wrongful relationship with Monica Lewinsky.

You will see that the President was truthful. And after reading, seeing, hearing, and studying the evidence for yourselves, not relying on what someone else says it is, not relying on someone else's description, characterization, or paraphrase of the President's testimony, we believe that you will conclude that what the President did and said in the grand jury was not unlawful, and that you must not remove him from office.

I plan to divide my presentation into three parts:

First, to tell you how really bad this article is, legally, structurally, and constitutionally, and to argue that it falls well below the most basic, minimal standards and should not be used to impeach and remove this President or any President from office; second, to address the various allegations directly; and third, to give you a few larger thoughts in response to some of the arguments from last week.

At the conclusion you will have had much more than 100 percent of your minimum daily requirements for lawyering, for which I apologize.

Article I accuses the President of having given perjurious, false, and misleading testimony to the grand jury concerning one or more of four different subject areas:

First, when he testified about the nature and details of the relationship with Ms. Lewinsky;

Second, when he testified about his testimony in the Jones deposition;

Third, when he testified about what happened during the Jones deposition when the President's lawyer, Robert Bennett, made certain representations about Monica Lewinsky's affidavit;

And, fourth, when he testified about alleged efforts to influence the testimony of witnesses and impede the discovery of evidence.

It is noteworthy that the second and third subject areas are attempts to revisit the President's deposition testimony in the Jones case. There was an article that was proposed alleging that the President also committed perjury in the Jones case in the Jones deposition. That article was rejected by the House of Representatives, and there were very many good reasons for the House to take that action. Those allegations have been dismissed, and you must not allow the managers to revive them. Last week they tried to do that. The managers mixed up and merged two sets of issues—allegations of perjury in the grand jury and allegations of perjury in the Jones case. These are very different matters. And I think the result was confusing and also unfair to the President.

You will notice that the third and the fourth subject areas correspond to, coincide, and overlap with many of the allegations of obstruction of justice in article II. This represents a kind of double charging that you might be familiar with if you have either been a prosecutor or a defense lawyer. One is, the defendant is charged with the core offense; second, the defendant is charged with denying the core offense under oath. This gives the managers two bites at the apple, and it is a dubious prosecutorial practice that is frowned upon by most courts.

The upshot, though, of this with respect to subparts 3 and 4 of this first article is that if you conclude, as I trust you will, that the evidence that the President engaged in obstruction of justice is insufficient to support that charge, it would follow logically that the President's denial that he engaged in any such activity would be respected, and he would be acquitted on the perjury charge. Simply put, if the President didn't obstruct justice, he didn't commit perjury when he denied it.

But the most striking thing about article I is what it does not say. It alleges the perjury generally. But it does not allege a single perjurious statement specifically. The majority drafted the article in this way despite pleas from other members of the committee and from counsel for the President that the article take care to be precise when it makes its allegations. Such specificity, as many of you know, is the standard practice of Federal prosecutors all across America. And that is the practice recommended by the Department of Justice in the manual distributed to the U.S. attorneys who enforce the criminal code in Federal courts throughout the Nation.

Take a look at the standard form. It is exhibit 5 in the exhibits that we handed to you. This is given to Federal prosecutors. This is the model that they are told to use to allege perjury in a criminal indictment in Federal court. There is a very simple reason why prosecutors identify the specific quotation that is alleged to be perjury, and why it is included in a perjury indictment. If they don't quote the specific statement that is alleged to be perjurious, courts will dismiss the indictment, concluding that the charge of perjury is too vague and that the defendant is not able to determine what precisely he is being charged with.

The requirement that a defendant be given adequate notice of what he is charged with carries constitutional dimensions, and the failure to provide that notice violates due process of law. This is something that applies to all criminal defendant offenses when they are charged. And you can understand why that kind of notice is required. Imagine a robbery indictment that failed to indicate who or what was robbed and what property was stolen. How could you possibly defend against the charge that you just stole something but you don't know what it is and it is nothing specific? Imagine a murder indictment without identifying a victim.

But this requirement is even more stringent for perjury prosecution. Description, paraphrase, or summary of testimony that is alleged to be perjurious are not acceptable. The quotation must be there, or the definition should be so close that there can be no doubt as to what is intended. In the past, when the House returned articles of impeachment alleging perjury with respect to Federal judges, you will see that the House has followed this practice. And if you go back to American history and review the articles that allege perjury and that have been approved by the House and the Senate, you will find that the statements that are alleged to be perjurious are specifically identified in the article.

Let me read from article I from the resolution of impeachment against Judge Walter Nixon. "The false or misleading statement was in substance that the Forest County District Attorney never discussed this case with Judge Nixon." There is no doubt about that. That is very clear. From the Alcee Hastings articles of impeachment, the false statement was, in substance, that Judge Hastings and William Borders never made any agreement to solicit a bribe from defendants in United States v. Romano, a case tried before Judge Hastings.

Why is it that in this case—surely the most serious perjury trial in American history—the House decided that specific allegations just aren't necessary? The failure of the House to be specific in its charge of perjury in fact violated the President's right to due process and fundamental fairness. And, as you will see as I go through the procedural history of these allegations, it puts us and the President at a significant disadvantage when we try to respond to the allegations that are now set forth in this article.

But there is yet another reason why this vagueness and lack of specificity is so very dangerous, and it raises a constitutional question that only this body can resolve.

Article I, section 2, clause 5, of the Constitution states, "The House of Representatives shall have the sole power of impeachment"—"the sole power of impeachment."

By failing to be specific in this article as to what it is precisely that the President said that should cause him to be removed from office, the House has effectively and unconstitutionally ceded its authority under this provision of the Constitution to the managers, who are not authorized to exercise that authority. By bringing general charges in this article, the House Judiciary Committee, and then the House of Representatives generally, gave enormous discretion, power, and authority to the floor managers and their lawyers to decide what precisely the President was going to be charged with. They didn't have that authority under the Constitution. Only

the House of Representatives has that authority. They have been allowed to pick and to choose what allegations will be leveled against the President of the United States.

It would be extremely dangerous to the integrity of the process if the House leveled such general charges against the President, creating "empty vessels," to use Mr. Ruff's term, to be filled by lawyers and floor managers. And this article, I think, will take on more importance as we take a closer look at the charges themselves and we see what kind of "witches' brew"—to use Mr. Ruff again—what kind of content was poured into these vessels, and find out where they came from and why and when.

I would like to talk about how these charges have been a moving target for us throughout this entire process. On September 9, when Kenneth Starr submitted his referral to the House of Representatives, he claimed that there was substantial and credible information to suggest that the President committed perjury in the grand jury on three separate occasions. To his credit, the Starr referral was moderately specific. We could understand what they were talking about in those allegations.

On October 5, when House majority counsel David Schippers first made his representation to the House Judiciary Committee, he discarded two of Mr. Starr's theories and invented a new one of his own. And he included only two counts in his presentation alleging perjury in the grand jury. Those two counts were unbelievably broad and included no specifics whatsoever.

On November 19, Mr. Starr appeared before the House Judiciary Committee and gave a 2-hour opening statement. In that statement he delivered one or two sentences on the subject of grand jury perjury.

Then, on December 9, when the committee majority released its four proposed articles of impeachment, the article that alleged perjury in the grand jury, which is the one we have before us today, failed to tell us or the American people what words the President actually used that should cause the Congress to remove him from office.

As you know, these proposed articles were released just as Mr. Ruff and the President's defense were being completed. In fact, it may have been 2 or 3 minutes before he completed his final argument before the committee. So we had no advance notice and no chance to discuss these articles, to respond to them, or in any way to react. In truth, I must say that because of the vagueness of the articles that were ultimately returned, had we been given such advance notice, it would not have made much difference because, simply put, there is a stunning lack of specificity in article I.

So where do we look for guidance? How do we know what to defend against in this case? After the Judiciary Committee had completed its deliberations, after the Members had voted to send four articles of impeachment to the full House, the majority issued its report on December 16th, only 3 days before the House took its final vote. It was never debated by, let alone approved by, the House of Representatives, and thus this report has no formal standing in these proceedings. But until the managers filed their trial brief and made their presentations just last week, the majority report, written by Mr. Schippers and his staff, was our only

place to go to look for guidance as to what those four subparts of this first article really meant.

Now, when it comes to perjury before the grand jury, the majority report argued that the President had not made two, not three, but a whole host of perjurious statements before the grand jury, some statements that were not contained in the Starr referral and had never been identified, charged, discussed, or debated by the Members during the impeachment inquiry.

For example, the majority report alleged that the prepared statement that the President made and delivered to the grand jury at the start of his testimony admitting his relationship with Ms. Lewinsky was "perjurious, false, and misleading," an astonishing allegation that went far beyond anything that Kenneth Starr had claimed, and a claim that no member of the Judiciary Committee had ever made in the course of the committee's deliberations.

Obviously, we had no opportunity whatsoever to respond to this allegation before the committee or before the House; the allegation was never debated or discussed by members of the committee, nor was it discussed during the debate in the Chamber of the House.

The majority report also alleged that the President committed perjury in the grand jury when he testified that his "goal in the [Jones] deposition was to be truthful," and when he said that he believed he had managed to complete his testimony in that deposition "without violating the law."

Again, this allegation was brand new to us, never before made by Starr, not included in the Schippers closing argument, never mentioned by Chairman HYDE or by anyone else in the committee, never addressed by the President's counsel, never debated by members of the committee, never discussed on the floor.

The majority report made many other new allegations of the same kind and pedigree—all new, undiscussed, untested. They had not come, ladies and gentlemen of the Senate, these allegations did not come from Starr's referral, nor did they come from any evidence that had been gathered in the course of the impeachment inquiry, nor had they ever been unveiled during the impeachment inquiry to allow the President's counsel to respond, or the members of the Judiciary Committee to debate them. To our knowledge, many of these allegations were never discussed or debated by the members of the committee. And if you read the closing arguments of the members of the House Judiciary Committee, you will search in vain for any specific reference to any of these new allegations, the terms of which are the subject of article I.

Then we found ourselves in the Senate, our only guide being the articles themselves, which, as you know, are general, and the majority report, which has no formal standing but which was filled with allegations and theories, and which had never been discussed much less adopted.

As the trial in the Senate began—just 3 days before the managers were scheduled to open their case, on January 11th—the House managers filed their trial brief. We discovered that the allegations of grand jury perjury against the President were still changing, still expanding, still increasing in number.

The trial brief made eight proffers, incredibly presented "merely as examples" that still in general terms describe instances where

the President allegedly provided "perjurious, false, and misleading testimony" to the grand jury.

But, we were warned, these proffers were only "salient examples" of grand jury perjury. The House managers said, "The [examples set forth in the trial brief] are merely highlights of the grand jury perjury. There are numerous additional examples." And when we heard Mr. Manager ROGAN's presentation, we realized that the trial brief was absolutely right; Mr. ROGAN unveiled allegations that had not been included even in the trial brief.

The uncertainty, fluidity, the vagueness of the charges in this case and the unwillingness of the prosecutors ever to specify and be bound by the statements that are at issue has been an aspect of this process that, I submit, has been profoundly unfair to this President. It is also unconstitutional, from the arguments I gave you.

The articles had come to include specific allegations of grand jury perjury that did not come from the Starr referral and that never would have been approved by the House had the House been required to review them.

There is one other element of unfairness that Mr. Ruff referred to. Even as the House managers have consistently tried to stretch the scope of article I to cover allegations never considered by the House, they have tried to twist the scope of article I to cover allegations specifically rejected by the House.

Now, let me be clear here. I am not charging the managers with going beyond the record of the case. These new allegations come from the record in the case. They are not beyond the record. They are in the record. But the Starr referral did not find it suitable to make these allegations, and they were not made in a timely way before the House Judiciary Committee and, I would submit, in a timely way before the House of Representatives.

I go back to this second element of unfairness that has to do with the Jones article. When that Jones article was rejected, we would argue that rejection should have been recognized for what it was, a clear instruction from the House of Representatives not to argue that the President should be impeached and removed because of his testimony in the Jones deposition. But the managers have sought to merge the Jones testimony with the grand jury testimony, to confuse these two events, to blend and blur them together.

The Senate must understand that these two events were different in every way. In the President's testimony in the Jones case, the President was evasive, misleading, incomplete in his answers, and, as I said to the House Judiciary Committee, maddening. But in the Federal grand jury, President Clinton was forthright and forthcoming. He told the truth, the whole truth and nothing but the truth for 4 long hours, and the American people saw that testimony and they know that President Clinton, when he appeared before the grand jury, did not deny a sexual relationship with Ms. Lewinsky—he admitted to one.

They know that he did not deny that he was alone with Ms. Lewinsky; he repeatedly acknowledged that he had been alone with her on many occasions.

The managers argued that the Jones testimony is relevant because, they say, the President perjured himself when he told the grand jury that his testimony in the Jones case was truthful, and it wasn't, say the managers. That characterization of the President's testimony, they say, is simply not accurate. What he said was, "My goal in this deposition was to be truthful but not particularly helpful . . . I was determined to walk through the minefield of this deposition without violating the law, and I believe I did." These are opinions. He is characterizing his state of mind.

The House managers, on the basis of this testimony, must not be allowed to do what the House of Representatives told them they could not do, which is to argue about the President's testimony in the Jones case. Even if you believe that the President crossed the line in his Jones deposition, you cannot conclude that he should be removed for it.

He was not impeached for it. This case is about the grand jury and the grand jury alone.

Now, in fact, the vagueness and uncertainty as to the specific allegations of perjury, whether in the grand jury or in the Paula Jones deposition, have created enormous confusion in the public about the President's conduct and about his testimony. This confusion, I think, has done enormous damage to the President, because out of this confusion has emerged a wholly inaccurate conventional wisdom about what President Clinton said when he testified in the grand jury. And that conventional wisdom is based on certain common mischaracterizations of the President's testimony.

Last December 8, I gave an opening statement in the President's defense before the committee. And when it came time for me to talk about the charges of perjury, I urged the members of the committee to open their minds, and because of widespread misinformation about the facts, to focus on the record. I make the same plea to you again today. Keep an open mind and look at the real record. Read the transcript. Watch the videotape. Do not rely upon anyone else's version.

We speak from some disappointing experience on this issue. Over and over again, inaccurate descriptions of the President's grand jury testimony have been launched into the public debate—sometimes innocently, sometimes negligently. But the result has been the same. The President's critics have created a conventional wisdom about the President's grand jury that is based on myth and not reality. There has been a merging of the President's testimony in the Jones deposition with that of his testimony in the grand jury, and this dynamic has been unfair to the President.

We are at No. 6 with the exhibits. Let me just cite a few examples. There are many more available, but they are from people and sources that are familiar with the case and close to the evidence, and some coming from the presentations of just last week.

At the conclusion of the impeachment inquiry conducted by the Judiciary Committee, the final arguments before the votes were taken in front of the committee, Congressman MCCOLLUM stated:

> The President gave sworn testimony in the Jones case in which he swore he could not recall being alone with Monica Lewinsky and that he had not had sexual relations with her.
>
> He repeated those assertions a few months later to the grand jury, and the evidence shows he lied about both.

That is not an accurate characterization of the President's testimony before the grand jury. In the majority report, written by the majority counsel, the author stated repeatedly that President Clinton testified before the grand jury that he did not have sexual relations with Ms. Lewinsky. Members of the Senate, those descriptions of the President's grand jury testimony are absolutely false. When he appeared before the grand jury, the President admitted—he did not deny—an inappropriate, intimate, wrongful, personal relationship with Ms. Lewinsky. When he made this admission there was no doubt in anyone's mind what he meant. It meant, and the whole world knew that it meant that the President of the United States had engaged in some form of sexual activity or sexual contact with Ms. Lewinsky.

In his appearance on a national news program on CNN television, this is another example: Over the New Year's weekend Mr. Manager GRAHAM was asked for the most glaring example of the President's alleged perjury before the grand jury. And he said:

> I think when the President said he wasn't alone with her, he lied.

That characterization of the President's grand jury testimony is not true. There can be absolutely no doubt that during his grand jury testimony, the President acknowledged—he did not deny, he repeatedly acknowledged—that he had been, on certain occasions, alone with Ms. Lewinsky. He acknowledged that fact in the opening sentence of his prepared statement to the grand jury. Let me read it. Let me read you the first words in the President's opening statement to the grand jury:

> When I was alone with Ms. Lewinsky on certain occasions in early 1996, and once in early 1997, I engaged in conduct that was wrong.

"When I was alone with Ms. Lewinsky," that is what the President of the United States said. That is what the transcript says. And no amount of eloquence or lawyerly skill from the managers can change that fact. Facts are stubborn.

He also engaged in a lengthy colloquy with the prosecutors about how many times he thought he had been alone with Ms. Lewinsky. And there can be no doubt in anyone's mind that he answered that he had been alone with Ms. Lewinsky on frequent occasions. He was asked, and he answered, and he said yes, and he made clear what he meant. He went on to say:

> I did what people do when they do the wrong thing. I tried to do it where nobody else was looking at it. I'd have to be an exhibitionist, not to have tried to exclude everyone else.

These are not the words of someone who is trying to hide the fact of his relationship with Ms. Lewinsky. And it is difficult to understand how reading these words, as well as the long and detailed testimony in front of the grand jury, how one can think or contend that the President repeated or ratified in his deposition before the grand jury about not ever being alone.

In the managers' trial brief issued just 3 days before they made their presentation, the brief makes the following statement. This is mischaracterization No. 4.

> [The President] falsely testified that he answered questions truthfully at his deposition concerning, among other subjects, whether he had been alone with Ms. Lewinsky.

Members of the Senate, as I just outlined in connection with Manager GRAHAM's statement, this characterization of the President's grand jury testimony is misleading. The lawyers for the Office of the Independent Counsel asked many questions and engaged in extensive colloquy with the President about being alone with Ms. Lewinsky. But they never asked him to explain, affirm, defend, or justify his testimony about that same topic in the Jones deposition. And he did not do so.

Members of the Senate, if justice is to be done, these misstatements and mischaracterizations must not be allowed to stand and must not be allowed to influence your judgment as you look at the evidence. So, please look at the real record. It is the record of the President's testimony, not the Jones deposition—his testimony before the grand jury that should be the Senate's sole concern.

Now, it is timely, I think, to talk a little bit about legalisms and technicalities and hairsplitting because those who have engaged in this process over the past months in this enterprise of defending the President have also been the subject of much criticism. The majority counsel accused us of "legal hairsplitting, prevarication and dissembling," and urged the Members of the Senate and the House to pay no attention to the "obfuscations and legalistic pyrotechnics of the President's defenders." And during his presentation just last week on January 15, Congressman MCCOLLUM implored you "not to get hung up on some of the absurd and contorted explanations of the President and his attorneys."

To the extent that we have relied on overly legal or technical arguments to defend the President from his attackers, we apologize to him, to you, and to the American public. We do the President no earthly good if, in the course of defending him, we offend both the judges, the jurors, and the American public. And Mr. Ruff had it just right when he expressed his concern to the members of the Judiciary Committee that our irresistible urge to practice our profession should not get in the way of securing a just result in this very grave proceeding for this very specific client.

But, when an individual—any individual—is accused of committing a crime such as perjury, the prosecutors must be put to their full proof. Every element of the crime must be proven. And if a criminal standard is going to be used here it must be proven beyond a reasonable doubt.

Now, the managers have taken it upon themselves directly and aggressively to accuse this President of criminal activity. They say that this criminal activity is at the heart of the effort to remove him from office. As Congressman MCCOLLUM said to you last week:

> The first thing you have to determine is whether or not the President committed crimes. If he didn't obstruct justice or witness tamper or commit perjury, no one believes [no one believes] he should be removed from office.

Allegations of legal crimes invite, indeed they call out for legal defenses. And you will not be surprised to learn that in defending the President of the United States, we intend and we will use all the legal defenses that are available to us, as they would be available to any other citizen of this country.

Teddy Roosevelt, quoted earlier in this proceeding, said it best: "No man is above the law and no man is below the law either." In

fact, the mere act of alleging perjury, as those of you in this body know who have tried perjury cases, the mere act of alleging perjury invites precisely the kind of hairsplitting everyone seems to deplore. If it is the will of the Congress to change the crime of perjury, to modify it, to eliminate certain judicially created defenses to that offense, so be it. But the crime of perjury has developed the way it has for some very good reasons, and it has a long and distinguished pedigree.

Its essential elements are well and clearly established, and Manager CHABOT's presentation was clear on those points, although you will not be surprised to learn that I disagree with his conclusions. Courts have concluded that no one should be convicted of perjury without demonstrating that the testimony in question was, in fact, false; that the person testifying knew it to be false; and that the testimony involved an issue that is material to the case, one that could influence the outcome of the matter one way or another.

In addition, courts and prosecutors are in general agreement that prosecutions for perjury should not be brought on the basis of an oath against an oath. The Supreme Court has spoken on this issue, holding that a conviction for perjury "ought not to rest entirely upon an oath against an oath."

Ladies and gentlemen of the Senate, when we presented our case to the Judiciary Committee last December, we invited five experienced prosecutors to examine the record of this case and to give us their views as to whether they would bring charges of perjury and obstruction of justice against the President based on that record. These five attorneys are five of the best, the most experienced, the most tested prosecutors the country has ever seen. Three served as high officials in Republican Departments of Justice; two served during Democratic administrations. All were in agreement that no responsible prosecutor would bring this case against President Clinton.

I would like to run the tape recordings of testimony from two of the individuals who testified, Tom Sullivan, former U.S. attorney from the Northern District of Illinois, as he describes the law of perjury, and Richard Davis, an experienced trial lawyer with prosecutorial experience in the Department of Justice and the Department of the Treasury.

[Text of videotape presentation:]

Mr. SULLIVAN. . . . The law of perjury can be particularly arcane, including the requirements that the government prove beyond a reasonable doubt that the defendant knew his testimony to be false at the time he or she testified, that the alleged false testimony was material, and that any ambiguity or uncertainty about what the question or answer meant must be construed in favor of the defendant.

Both perjury and obstruction of justice are what are known as specific intent crimes, putting a heavy burden on the prosecutor to establish the defendant's state of mind. Furthermore, because perjury and obstruction charges often arise from private dealings with few observers, the courts have required either two witnesses who testified directly to the facts establishing the crime, or, if only one witness testifies to the facts constituting the alleged perjury, that there be substantial corroborating proof to establish guilt. Responsible prosecutors do not bring these charges lightly.

The next testimony you will hear is from Richard Davis, who is Acting Deputy Attorney General—excuse me, he was assistant from the Southern District of New York, task force leader for a Watergate special prosecution force and Assistant Secretary of Treasury for Enforcement and Operations from 1977 to 1981.

[Text of videotape presentation:]

Mr. DAVIS. . . . In the context of perjury prosecutions, there are some specific considerations which are present when deciding whether such a case can be won. First, it is virtually unheard of to bring a perjury prosecution based solely on the conflicting testimony of two people. The inherent problems in bringing such a case are compounded to the extent that any credibility issues exist as to the government's sole witness.

Second, questions and answers are often imprecise. Questions sometimes are vague, or used too narrowly to define terms, and interrogators frequently ask compound or inarticulate questions, and fail to follow up imprecise answerers. Witnesses often meander through an answer, wandering around a question, but never really answering it. In a perjury case, where the precise language of a question and answer are so relevant, this makes perjury prosecutions difficult, because the prosecutor must establish that the witness understood the question, intended to give a false, not simply an evasive answer, and in fact did so. The problem of establishing such intentional falsity is compounded, in civil cases, by the reality that lawyers routinely counsel their clients to answer only the question asked, not to volunteer, and not to help out an inarticulate questioner.

Legalistic though some of these legal defenses may be, these are the respectable and respected, acceptable and expected defenses available to anyone charged with this kind of a crime. So to accuse us of using legalisms to defend the President when he is being accused of perjury is only to accuse us of defending the President. We plead guilty to that charge, and the truth is that an attorney who failed to raise these defenses might well be guilty of malpractice.

But putting the legal defenses aside, it is not a legalistic issue to point out that the President did not say much of what he is accused of having said. It is not legalistic to point out that a witness did not say what some rely on her testimony to establish. And it is not too legalistic to point out that a President of the United States should not be convicted of perjury and removed from office over an argument, a dispute about what is and what is not the commonly accepted meaning of words in his testimony.

I would like to make one additional point about the Office of the Independent Counsel and the Starr prosecutors. They, as you know, have had a long and difficult relationship with the White House. It has been intense, adverse, frequently hostile. They were the ones who conducted the interrogation of the President before the grand jury. These attorneys from the Office of Independent Counsel were identified by Mr. Starr as being experienced and seasoned and professional.

In the referral that they sent over to the House of Representatives, they make three allegations of grand jury perjury, and the managers, based on my analysis of Mr. ROGAN's speech, appear to have adopted two of those allegations.

What is most remarkable is the fact that the managers make many, many allegations of grand jury perjury that the independent counsel declined to make, that were not included in the referral.

Think about it for a moment. The lawyers working for the Office of the Independent Counsel, they were in charge of this investigation. They were the ones who called the President. They were the ones running the grand jury. It was their grand jury. They conducted the questioning of the President. They picked the topics. They asked the follow-up questions.

You should remember one additional fact. Their standard for making a referral is presumably much lower than the standard you would expect from the managers in making a case for the removal

of the President in an article of impeachment. The Independent Counsel Act calls upon the independent counsel to make a referral when there is credible and substantial information of potential impeachable offenses.

They looked at the record, the same record that the managers had, and they did make a referral and they did send recommendations to the House of Representatives.

But these lawyers, Mr. Starr and his fellow prosecutors, did not see fit to allege most of the charges that we are discussing today. It is fair for us to assume that the Office of Independent Counsel considered and declined to make the very allegations of perjury that the House managers presented to you last week. Apparently, the managers believe that Ken Starr and his prosecutors have been simply too soft on the President.

This should cause the Members of the Senate some concern and some additional reason to give very careful scrutiny to these charges. When you do, you will find the following: The allegations are frequently trivial, almost always technical, often immaterial and always insubstantial. Certainly not a good or justifiable basis for removing any President from office.

Finally, as we go through the allegations and the evidence that I will be discussing, please ask yourself, What witness do I want to hear about this issue? Will live witnesses really make a difference in the way that I think about this? Are they necessary for this case and this article to be understood and resolved?

Subpart 1 has to do with testimony about the nature and details of the relationship with Monica Lewinsky. And, once again, because article I does not identify with any specificity what the President said in the grand jury that is allegedly perjurious, the House managers have been free to include whatever specific allegations they—not the House of Representatives—have seen fit to level against the President.

And we have been left to guess—so this is my guesswork—we have been left to guess what the specific allegations are. And we have done so. And we have tried to identify the precise testimony at issue based on the managers' trial brief and on Mr. Manager ROGAN's presentation.

Now, as you will see in these allegations of subpart 1, it is the managers who resort to legalisms, who use convoluted definitions and word games to attack the President. It is the managers who employ technicalities and legal mumbo jumbo, who distort the true meaning of words and phrases in an effort to convict the President. And we are the ones who must cry "Foul." We are the ones who must point out what the managers are trying to do here. They seek to convict the President and remove him from office for perjury before a grand jury by transforming wholly innocent statements about immaterial issues into what are alleged to be "perjurious, false and misleading" testimony.

I begin with what is identified in the majority report as "direct lies." First, the managers claim that the President perjured himself before the grand jury, that he told a direct lie and should be removed from office because in his prepared statement he acknowledged having inappropriate contact with Ms. Lewinsky on "certain occasions." This was a "direct lie," say the managers, because, ac-

cording to Ms. Lewinsky, between November 15, 1995, and December 28, 1997, they were alone at least 20 times and had, she says, 11 sexual encounters. To use the words "on certain occasions" in this context is, according to the managers, "perjurious, false and misleading."

Now, this particular chart was not included in Mr. Starr's referral, and it was not debated by the members of the Judiciary Committee in the House of Representatives.

The managers also say that the President lied to the grand jury and should be removed from office because the President acknowledged that "on occasion" he had telephone conversations that included sexual banter—this is also in the prepared statement—when the managers say the President and Ms. Lewinsky had 17 such telephone conversations over a 2-year period of time. To use the words "on occasion" in this context, it is, according to the managers, a "direct lie" to the grand jury for which the President should be removed from office. Now, this charge was not included in Mr. Starr's referral. It was not debated by the members of the House Judiciary Committee. And it was not debated on the floor of the House.

In responding to these two charges, it may make some sense to begin with the dictionary definition of "occasional" to satisfy ourselves that the President's statement is, in fact, a more than reasonable and actually an accurate use of that word under the circumstances.

Now, there are 774 days in the time span between November 1995 and December 1997. I submit that it is not a distortion, it is not dishonest to describe their activity, which Ms. Lewinsky claims occurred on 11 different days—from our examination of her testimony, we can only locate 10, but she says 11—as having occurred "on certain occasions." Look at the calendar.

Now, that phrase, "on certain occasions," carries no inference of frequency or numerosity. It sort of means it happened every now and then. And the same could be said for the use of the words "on occasion" when they were talking about telephone conversations to describe 17 telephone conversations that included explicit sexual language.

Now, as you consider the second allegation having to do with the phone calls, you might also read the grand jury testimony of Ms. Lewinsky herself on August 20, 1998, at page 1111. There a grand juror asks her, how much of the time, and how often—when she was on the phone with the President—did they engage in these kinds of graphic conversations. Ms. Lewinsky answered, "Not always. On a few occasions." The managers are trying to remove the President from office when he used the words "on occasions," when Ms. Lewinsky described that frequency or that event precisely the same way.

There is simply no way that the President's use of the words "on certain occasions" or "on occasion" can be used as an effort to mislead or deceive the members of the grand jury or to conceal anything. There is simply no way that a reasonable person can look at this testimony and conclude—or agree with the managers—that it is a "direct lie." What message do the managers send to America

and to the rest of the world when they include these kinds of allegations as reasons to remove this President from office?

It is hard to take the charges seriously when in each case they boil down to arguments of semantics. Does anyone here really believe that Members of the House of Representatives would have voted to approve these allegations as the basis for impeaching and removing this President if they had been given the chance with specific, identified perjurious testimony in a proposed article of impeachment? But here we are in the well of the Senate defending the President of the United States against allegations that the managers believe and have seriously argued should cause the President to be removed from office and even prosecuted and convicted in a criminal court.

The President is also accused of lying before the grand jury—and the managers have asked you to convict him and remove him from office—because, in the prepared statement that he read to the grand jury in August, he acknowledged that he engaged in inappropriate conduct with Ms. Lewinsky "on certain occasions in early 1996 and once in 1997." The managers call this a "direct lie" because the President did not mention 1995. And in their trial memorandum they write: "Notice [the President] did not mention 1995. There was a reason: On three 'occasions' in 1995, Ms. Lewinsky said she engaged in sexual contact with the President."

Now, this was one allegation that the Office of the Independent Counsel did include in its referral to the House. And this charge was, in fact, discussed and debated by the members of the Judiciary Committee when they conducted their impeachment inquiry. Let me show you what two members of that committee—now managers for the House in this trial—thought about this particular charge of perjury when Congressman BARNEY FRANK ridiculed it during the debate.

The chairman of the Judiciary Committee, Mr. HYDE—we are missing an exhibit here; I think it is No. 10—said, "It doesn't strike me as a—as a terribly serious count." Congressman CANADY, in his closing argument in the final stage of that proceeding, said, "I freely acknowledge that reasonable people can disagree about the weight of the evidence on certain of the charges. For example, I think there is doubt about the allegations that the President willfully lied concerning the date his relationship with Ms. Lewinsky began."

This allegation involves an utterly meaningless disparity in testimony about dates that are of absolutely no consequence whatsoever. The most likely explanation here is that there was an honest difference in recollection. There is no dispute about the critical facts that Ms. Lewinsky was young, very young, too young, when she got involved with President Clinton. But her age didn't change between November 1995 and January 1996. Her birthday is in July. She was 22 years old in November and 22 years old in January, despite the fact that every manager persists in stating, erroneously—not perjuriously, erroneously—that she was 21 years old when she first became involved with the President. Nothing of any importance in the case took place between December 1995 and January 1996. She was an intern in the early stage of that period, and she became a Government employee. So it did not change the rela-

tionship that she had with the President. It modified her title. Any dispute over this immaterial issue is silly.

It is unreasonable to argue, as we heard from the House managers last week, that if you believe Ms. Lewinsky and disbelieve the President on this issue as to which date was the date that they began the relationship and had the inappropriate contact, that you must convict the President and remove him from office.

I confess, I find myself in agreement with Congressman HYDE when he says this allegation is not serious, not "terribly serious." And I agree with Congressman CANADY when he suggests "there is" room for "doubt" as to whether the President had any real reason or motive to lie about these things.

I truly wonder if the House of Representatives, had it been identified as a specific statement for them to consider, would have made and included this allegation in the articles of impeachment aimed at removing President Clinton from office.

Is this conflict in testimony really such a serious issue that, if you find the President is mistaken, he should be removed from office? And is it important enough to require the testimony of live witnesses? Is it material of anything of interest to the grand jury at the time this testimony was given? I don't think so.

Now, between the time of the vote in the House and the time that the managers filed their trial brief, the managers came up with another allegation of perjury and put it into the mix. They argue that this element of the President's grand jury testimony should also cause him to be removed from office. This allegation involves the President's statement that there was some period of friendship with Ms. Lewinsky that led to inappropriate contact. But it is immaterial, unimportant, and fundamentally frivolous as an allegation. And it was not, needless to say, included in the Starr referral. I am sure the attorneys in the Office of Independent Counsel knew about this statement and chose not to include it. It was never discussed by the members of the Judiciary Committee during the impeachment inquiry. We never heard about it, never saw it, never had a chance to deal with it. It was never mentioned on the floor of the House of Representatives.

According to my examination—which may be flawed—my thinking is that it made its first appearance in the matter only after the House of Representatives voted on the articles of impeachment when the managers filed their trial brief. Does anyone really believe that the House of Representatives would have voted to approve this allegation as a basis for convicting and removing this President from office?

Then the managers turn to what, in the majority report, they call "the heart of the perjury"; that is, the President's grand jury testimony that his encounters with Ms. Lewinsky did not constitute "sexual relations" as defined by the Jones lawyers in the Jones deposition.

Before dealing with this allegation, however, it is important to understand that in the course of his testimony the President was required to deploy two different definitions of "sexual relations." One was his own and the other was the definition supplied to him by the Jones lawyers and modified by Judge Susan Webber Wright during his deposition.

First, if you turn to exhibit No. 11, you will find the President's definition, his own personal definition, as reported to the grand jury.

Next, let me direct your attention to the transcript of the telephone conversation between Monica Lewinsky—I am talking here about exhibit 12—Monica Lewinsky and Linda Tripp, where Ms. Lewinsky explained her definition of "sexual relations." This conversation occurred, incidentally, many weeks before Ms. Lewinsky executed her affidavit for the Jones case.

Finally, look at the dictionaries and read their definitions. You can see that in exhibit 13.

By the way, exhibit 12, which includes Ms. Lewinsky's definition, is confirmed by other parts of the record where she talks to other individuals, FBI agents. She refers to this understanding and this definition in her proffer. So it is not just the one telephone conversation to establish what Monica Lewinsky says she thought at that time the definition was.

Although some might think that the President's definition is unduly limited and that both of them are splitting hairs, there is some reasonable basis and there is reputable authority to support their view. It seems clear that Ms. Lewinsky could think, and probably did think and reassure herself at the time she wrote and executed her affidavit, that the affidavit she submitted in the Jones case was, in fact, accurate. And thus, knowing Ms. Lewinsky's view of that situation and sharing her definition, the President could reasonably say, "Absolutely, yes," when Mr. Bennett asked the President if Ms. Lewinsky's affidavit stating she had never had sexual relations with the President was true.

How can you accept the argument of the House managers that the President should be removed from office because his definition, which is the dictionary definition, does not comport with theirs?

We are going to play the videotape. We are going to talk about the definition that was the second definition that was given to the President in the Jones deposition, which is also the subject of grand jury testimony, and we are going to play 14 minutes of that videotape at the beginning of the President's appearance, or at the time he was first handed the definition and sits at the table.

This may be a good time to take a break because it will be a 14-minute span of time.

The CHIEF JUSTICE. The Chair recognizes the majority leader.

RECESS

Mr. LOTT. Mr. Chief Justice, I ask unanimous consent that we take a 10-minute recess at this time. I urge the Senators to relax a moment but come right back to the Chamber so we can proceed.

There being no objection, at 2:06 p.m., the Senate recessed until 2:24 p.m.; whereupon, the Senate reassembled when called to order by the Chief Justice.

The CHIEF JUSTICE. The Chair recognizes the majority leader.

Mr. LOTT. Mr. Chief Justice, I believe we will be proceeding with Mr. Counsel Craig's video perhaps, or do you have something before that?

Mr. Counsel CRAIG. I have a little bit of production.

The CHIEF JUSTICE. The Chair recognizes Mr. Counsel Craig.

Mr. Counsel CRAIG. Thank you, Mr. Chief Justice.

Exhibit No. 14 in your collection of exhibits is the definition that the President was handed when he went into his deposition testimony—to give his deposition testimony. There are two or three things I would like to say about this exhibit before we go to the videotape.

The first is this: Many of the President's critics have accused the President of himself coming up with this tortured and convoluted definition so that he could get away with denying having sex with Ms. Lewinsky; that he was the one that came up with a bizarre and surreal definition that would give him some plausible deniability and allow him to conceal his relationship with Ms. Lewinsky from the Jones lawyers. But in truth this definition was not his idea, not his work product, not his own definition. And it is unfair and inaccurate to saddle him with inventing such a silly and truncated definition, and the event that flows from that.

My second point is this: The mere fact that the lawyers in Jones felt the need to use a definition for sexual relations is, by itself, standing alone, evidence to support the notion that at least they recognized that the precise meaning of the term can and does differ from person to person. It is precisely then, when there is some uncertainty or ambiguity about the meaning and common usage of words, that lawyers turn to create a definition in an effort to have clarity, uniformity and common understanding. And the very fact that the lawyers in Jones seem to think that a definition was needed means that without such a definition there is no commonly accepted, no universally agreed upon meaning of this phrase. And what is or is not included within the ambit of that definition becomes an argument and nothing more—certainly not perjury.

The third point to remember before we watch the President as he first sees this piece of paper is this:

To understand what is going on in the President's mind at the time he testified about this definition during the Jones deposition, you must look at what was deleted as well as looking at that part of the definition that was left behind.

You will see that in the third paragraph of the definition there is the description which, in fact, more closely approximates what went on between Ms. Lewinsky and the President within the first paragraph. And this part of the definition was deleted by the judge.

There is an additional point. On the tape you will hear the President's lawyer, Mr. Bennett—and Mr. Ruff referred to this yesterday—urging the Jones lawyers to abandon this definition, to leave it behind, and ask direct questions of the President as to what he did. The record would certainly have been clearer for all of us if he had followed Mr. Bennett's advice. And there is another voice that you will hear in addition to Mr. Bennett—Mr. Fisher, who was the Jones lawyer, the judge, Judge Wright, and the voice of the lawyer of the President's codefendant in the case of Danny Ferguson.

Let me just briefly tell you what to look for. The President first saw this definition when he entered the room and sat down to testify—not before. You will see him as he sits there and he is handed a piece of paper with the definition typed on it. Neither he nor his

lawyer had ever seen that definition before. He was then required to sit down to study it, and to understand it.

And if you look at the next exhibit, this is what he says about what he thought and did later in the grand jury. I think this is the definition, exhibit No. 15. You will watch him as he says this.

I might also note that when I was given this and began to ask questions about it, I actually circled number one. This is my circle here. I remember doing that so I could focus only on those two lines, which is what I did.

This was the actual deposition exhibit with his circle around No. 1.

Let us remember finally what his testimony is about his intentions in this deposition. "My goal is to be truthful, but I didn't want to help them."

Let's watch what happened.

[Text of videotape presentation:]

A. Good morning.

Q. My name is Jim Fisher, sir, and I'm an attorney from Dallas, Texas, and I represent the Plaintiff, Paula Jones, in this case. Do you understand who I am and who I'm representing today?

A. Yes.

Q. And do you understand, sir, that your answers to my questions today are testimony that is being given under oath?

A. Yes.

Q. And your testimony is subject to the penalty of perjury; do you understand that, sir?

A. I do.

Q. Sir, I'd like to hand you what has been marked Deposition Exhibit 1. So that the record is clear today, and that we know that we are communicating, this is a definition of a term that will be used in the course of my questioning, and the term is "sexual relations." I will inform the Court that the wording of this definition is patterned after Federal Rule of Evidence 413. Would you please take whatever time you need to read this definition because when I use the term "sexual relations," this is what I mean today.

Mr. BENNETT. Is there a copy for the Court?

Mr. FISHER. Would you pass that, please?

Mr. BENNETT. Your Honor, as an introductory matter, I think this could really lead to confusion, and I think it's important that the record be clear. For example, it says, the last line, "contact means intentional touching, directly or through clothing," I mean just for example, one could have a completely innocent shake of the hand, and I don't want this record to reflect—I think we're here today for Counsel for the Plaintiff to ask the President what he knows about various things, what he did, what he didn't do, but I, I have a real problem with this definition which means all things to all people in this particular context, Your Honor.

Mr. BRISTOW. Your Honor, I think the wording of that is extremely erroneous. What this, what the deposing attorney should be looking at is exactly what occurred, and he can ask the witness to describe as exactly as possible what occurred, but to use this as an antecedent to his questions, it would put him in a position, if the President admitted shaking hands with someone, then under this truncate deposition—or definition, he could say or somehow construe that to mean that that involves some sort of sexual relations, and I think it's very unfair. Frankly I think it's a political trick, and I've told you before how I feel about the political character of what this lawsuit is about.

Mr. FISHER. Your Honor, may I respond?

Judge WRIGHT. You may.

Mr. FISHER. The purpose of this is to avoid everything that they have expressed concern about. It is to allow us to be discreet and to make the record crystal clear. There is absolutely no way that this could ever be construed to include a shaking of the hand.

Mr. BENNETT. Well, Mr. Fisher, let me refer you to paragraph two. It says "contact between any part of the person's body or an object and the genitals or anus of another person."

What if the President patted me and said I had to lose ten pounds off my bottom? I—you could be arguing that I had sexual relations with him. Your Honor, this is

going to lead to confusion. Why don't they ask the President what he did, what he didn't do, and then we can argue in Court later about what it means.

Judge WRIGHT. All right, let me make a ruling on this. It appears that this really is not the definition of contact under Rule 413 because Rule 413 deals with nonconsensual contact. This definition would encompass contact that is consensual, and of course the Court has ruled that some consensual contact is relevant in this case, and so let the record reflect that the Court disagrees with counsel that this is not, about it being the definition under Rule 413. It's not. It is more in keeping with, however, the Court's previous rules, but I certainly agree with the President's Counsel that this, the definition number two is too encompassing, it's too broad, and so is definition number three. Definition number one encompasses intent, and so that would be, but numbers two and three is just, are just too broad.

Mr. FISHER. All right, Your Honor.

Judge WRIGHT. And number one is not too broad, however, so I'll let you use that definition as long as we understand that that's not Rule 413, it's just the rule that would apply in this case to intentional sexual contact.

Mr. FISHER. Yes, Your Honor, and had I been allowed to develop this further, everyone would have seen that Deposition Exhibit 2 is actually the definition of sexual assault or offensive sexual assault, which is the term in Rule 413.

Mr. BENNETT. Your Honor, I object to this record being filled with these kinds of things. This is going to leak. Why don't they ask—they have got the President of the United States in this room for several hours. Why don't they ask him questions about what happened or didn't happen?

Judge WRIGHT. I will permit him to refer to definition number one, which encompasses knowing and intentional sexual contact for the purpose of arousing or gratifying sexual desire. I'll permit that. Go ahead.

Q. All right, Mr. President, in light of the Court's ruling, you may consider subparts two and three of Deposition Exhibit 1 to be stricken, and so when in my questions I use the term "sexual relations," sir, I'm talking only about part one in the definition of the body. Do you understand that, sir?

A. I do.

Q. I'm now handing you what has been marked Deposition Exhibit 2. Please take whatever time you need to read Deposition Exhibit 2.

Mr. BENNETT. Your Honor, again, what I am very worried about, Your Honor, is first of all, this, this, this appears to be a—I mean what I don't want to do is have him being asked questions and then we don't, we're all ships passing in the night. They're thinking of one thing, he's thinking of another. Are we talking criminal assault? I mean this is not what a deposition is for, Your Honor. He can ask the President, what did you do? He can ask him specifically in certain instances what he did, and isn't that what this deposition is for? It's not to sort of lay a trap for him, and I'm going to object, to the President answering and having to remember what's on this whole sheet of paper, and I just don't think it's fair. It's going to lend to confusion.

Judge WRIGHT. All right, do you agree with Mr. Bennett?

Mr. BRISTOW. I had one other point to add Your Honor.

Judge WRIGHT. All right.

Mr. BRISTOW. This is almost like in a typical automobile accident where the plaintiff's counsel wants to ask the defendant were you negligent. That's not factual.

Judge WRIGHT. Mr. Fisher, do you have a——

Mr. FISHER. Yes, Your Honor. What I'm trying to do is avoid having to ask the President a number of very salacious questions and to make this as discreet as possible. This definition, I think the Court will find, is taken directly from Rule 413 which I believe President Clinton signed into law, with the exception that I have narrowed subpart one to a particular section, which would be covered by Rule 413, and I have that section here to give the President so that there is no question what is intended. This will eliminate confusion, not cause it.

Mr. BENNETT. Your honor, I have no objection where the appropriate predicates are made for them to ask the President , did you know X, yes or no, what happened, what did you do, what didn't you do. We are—acknowledge that some embarrassing questions will be asked, but then we will know what we're talking about, but I do not want my client answering questions not understanding exactly what these folks are talking about.

Now, Your Honor, I told you that the President has a meeting at four o'clock, and we've already wasted twenty minutes, and Mr. Fisher has yet to ask his first factual question.

Judge WRIGHT. Well, I'm prepared to rule, and I will not permit this definition to be understood. Quite frankly there's several reasons. One is that the Court heretofore has not proceeded using these definitions. We have used, we've made numer-

ous rulings or the Court has made numerous rulings in this case without specific reference to these definitions, and so if you want to know the truth, I don't know them very well. I would find it difficult to make rulings, and Mr. Bennett has made clear that he acknowledges that embarrassing questions will be asked, and if this is in fact an effort on, on the part of Plaintiff's Counsel to avoid using sexual terms and avoid going into great detail about what might or might not have occurred, then there's no need to worry about that, you may go into the detail.

Mr. BENNETT. If the predicates are met, have no objection to the detail.

Mr. FISHER. Thank you, Your Honor.

Judge WRIGHT. It's just going to make it very difficult for me to rule, if you want to know the truth, and I'm not sure Mr. Clinton knows all these definitions, anyway.

Did you hear that last statement from the judge? "I'm not sure Mr. Clinton knows all these definitions, anyway."

Now, before the grand jury the President discussed at some length and in great detail his interpretation of the definition that he was asked to apply during that deposition—the definition that he was asked to apply. And he gave lengthy and sustained answers. And when you read the grand jury testimony, as I urge you to do, you will see that they are consistent and they are logical and there is reason behind his conclusion that his activities with Ms. Lewinsky simply did not fall within that definition.

There is no mystery, no deception, no lying, no effort to conceal his view. His view is there for all to see. It is also reported from these limited excerpts from the grand jury testimony. It is a plain statement of his understanding. And to argue that the President, when he conveyed his understanding of that definition, doesn't really believe his argument, and to contend that he is committing perjury when he told the grand jury that he genuinely believed his interpretation of the definition—that is just speculation about what is in his mind and it is not the stuff or fuel of a perjury prosecution.

Now, I would like to return very briefly to the group of experienced prosecutors who gave their opinion about the President's testimony before the grand jury on this issue. They said that the President's interpretation was a reasonable one under the circumstances, but the managers claim that the President's explanation of the Jones definition, his interpretation, his understanding, and his argument with the lawyers from the Office of Independent Counsel, are the heart of the perjury.

Let's hear what the prosecutors said about this and read the transcript of their testimony when they testified before the House Judiciary Committee. And first we will listen to Tom Sullivan.

[Text of videotape presentation:]

Mr. SULLIVAN. Thank you very much, Mr. Hyde. It's clear to me that the president's interpretation is a reasonable one, especially because the words which seem to describe oral sex—the words which seem to describe directly oral sex were stricken from the definition by the judge. In a perjury prosecution, the government must prove beyond a reasonable doubt, that the defendant knew when he gave the testimony, he was telling a falsehood. The lying must be knowing and deliberate. It is not perjury for a witness to evade or obfuscate or answer nonresponsively. The evidence simply does not support the conclusion that the president knowingly committed perjury, and the case is so doubtful and weak that a responsible prosecutor would not present it to the grand jury.

We have one more excerpt from his testimony.

[Text of videotape presentation:]

Mr. SULLIVAN. . . . In perjury cases, you must prove that the person who made the statement made a knowingly false statement. Now, where I think the defect in

this prosecution is, among others—and I don't think it would be brought, because it's ancillary to a civil deposition—is to establish that the president knew what he said was false. When he testified in his grand jury testimony, he explained what his mental process was in the Jones deposition, and he said the two definitions that would describe oral sex had been deleted by the trial judge from the definition of sexual relations and I understood the definition to mean sleeping with somebody. I don't want to get to particular here.

Rep. LOFGREN. Thank you.

Mr. SULLIVAN. But that is where this case, in my opinion, wouldn't go forward even if you found an errant prosecutor who would want to prosecute somebody for being a peripheral witness in a civil case that had been settled. That's my answer to that.

The managers place great emphasis and weight on the conflict in the testimony between President Clinton and Ms. Lewinsky over some specific intimate details related to their activity. There is a variance between the President's testimony and Ms. Lewinsky's testimony about the details of what they did. What do they disagree about? Not about whether the President and Ms. Lewinsky had a wrongful relationship—the President admitted that before the grand jury. Not about whether the President and Ms. Lewinsky were alone together—the President admitted that before the grand jury. Not about whether, when they were alone together, their relationship included inappropriate, intimate contact—the President admitted that before the grand jury. Not about whether they engaged in telephone conversations that included sexual banter—the President admitted that before the grand jury. Not about whether the President and Ms. Lewinsky wanted to keep their wrongful relationship a secret—the President admitted that before the grand jury.

The difference in their testimony about their relationship is limited to some very specific, very intimate details. And this is the heart of the entire matter, this disparity in their testimony. The true nub of the managers' allegation that the President committed perjury is that he described some of the contact one way and she describes it another.

Not surprisingly, the managers choose to believe Ms. Lewinsky's description of these events. And so, even in the absence of any evidence to the contrary, other than Ms. Lewinsky's own recollection of these events, the managers have concluded that the President lied under oath about the details of his sexual activity, that he somehow shortchanged the grand jury, and should be removed from office.

The possibility that the question of whether the President of the United States should be removed from his office—the fact that that might hinge on whether you believe him or her on this issue is a staggering thought. Ordinarily when dealing with disparity in testimony such as this, prosecutors will have nothing to do with it. Only two people were there. And, in truth, the real importance of the disparity in their testimony is questionable. Not all disparities or discrepancies in testimony are necessarily appropriate subjects for perjury prosecutions.

According to those experienced prosecutors who testified before the Judiciary Committee, there are two more points to be made about this. First, this is a classic oath on oath—he says, she says—swearing match, that, under ordinary custom and practice at the Department of Justice, never would be prosecuted without substan-

tial corroborative proof. Such proof, say these experienced prosecutors, does not consist of testimony of friends and associates of Ms. Lewinsky who tell the FBI that Ms. Lewinsky contemporaneously told them about the activity, if it was going on. But the managers claim that these contemporaneous statements corroborate Ms. Lewinsky's testimony.

That claim is specious. Statements that Ms. Lewinsky makes to other people are not viewed as independent corroborative evidence. They come from the same source. They come from Ms. Lewinsky, as the source that gave that testimony to the grand jury. And no court and no prosecutor would accept the notion that such statements, standing alone, satisfy the requirement of substantial corroborative proof when there is a swearing match.

Now, let's see what the experienced prosecutors have to say about this issue and that claim.

[Text of videotape presentation:]

Rep. WEXLER. . . . What is the false statement?

Mr. SULLIVAN. Well, if you—it could be one of two. It could be when he denied having sexual relations and I've already addressed that, because he said, "I was defining the term as the judge told me to define it and as I understood it," which I think is a reasonable explanation. The other is whether or not he touched her—touched her breast or some other part of her body, not through her clothing, but directly. And he says, "I didn't," and she said, "I (sic) did," so it's who-shot-John. It's, it's, you know, it's a one on one. The corroborative evidence that the prosecutor would have to have there, which is required in a perjury case—you can't do it one on one, and no good prosecutor would bring a case with, you know, I say black, you say white—would be the fact that they were together alone and she performed oral sex on him. I think that is not sufficient under the circumstances of this case to demonstrate that there was any other touching by the president and therefore he committed this—you know, he violated this—and committed perjury.

Now the testimony from Richard Davis on this same point, and then we will move to subpart 2.

[The text of videotape presentation:]

Mr. DAVIS. . . . I will now turn to the issue of whether, from the perspective of a prosecutor, there exists a prosecutable case for perjury in front of the grand jury. The answer to me is clearly no. The president acknowledged to the grand jury the existence of an improper intimate relationship with Monica Lewinsky, but argued with the prosecutors questioning him, that his acknowledged conduct was not a sexual relationship as he understood the definition of that term being used in the Jones deposition. Engaging in such a debate, whether wise or unwise politically, simply does not form the basis for a perjury prosecution. Indeed, in the end, the entire basis for a grand jury perjury prosecution comes down to Monica Lewinsky's assertion that there was a reciprocal nature to their relationship, and that the president touched her private parts with the intent to arouse or gratify her, and the president's denial that he did so. Putting aside whether this is the type of difference of testimony which should justify an impeachment of a president, I do not believe that a case involving this kind of conflict between two witnesses would be brought by a prosecutor, since it would not be won at trial.

A prosecutor would understand the problem created by the fact that both individuals had an incentive to lie—the president to avoid acknowledging a false statement at his civil deposition, and Miss Lewinsky to avoid the demeaning nature of providing wholly unreciprocated sex. Indeed, this incentive existed when Miss Lewinsky described the relationship to the confidantes described in the independent counsel's referral. Equally as important, however, Mr. Starr has himself questioned the veracity of one witness, Miss Lewinsky, by questioning her testimony that his office suggested she tape record Ms. Currie, Mr. Jordan, and potentially the president. And in any trial, the independent counsel would also be arguing that other key points in Miss Lewinsky's testimony are false, including where she explicitly rejects the notion that she was asked to lie and that assistance in her job search was an inducement for her to do so.

The conclusion is clear: To make this case in any courtroom would be very difficult for a prosecutor. They point out that it is difficult, if not impossible, to put on a successful prosecution if the chief witness is deemed by the prosecutors to be unreliable on some issues, but presented as totally truthful on others.

Now let's move to subpart 2, and it is exhibit No. 18. The allegations of perjury here have to do with testimony that he gave at the grand jury about his deposition in the Jones case. And I begin by repeating a point that I made a little earlier, that the House of Representatives did not vote to approve the article that alleged that President Clinton committed perjury during his deposition in the Jones case. As I said before, there was good reason for that.

What are the reasons? There are many reasons. The President's testimony in the Jones deposition involved his relationship with a witness who was ancillary to the core issues of the Jones case. She was a witness in the case. She wasn't the plaintiff in the case, and she was ancillary to the core issues in the case, someone whose testimony was thereafter held to be unnecessary and perhaps inadmissible by Judge Susan Webber Wright, someone whose truthful testimony would have been, in any event, of marginal relevance since her relationship with the President was entirely consensual. And, as you know, this was a case that ultimately was found to have no legal or factual merit. It was dismissed by the judge, and it is now being settled by the parties.

Moreover, the President was caught by surprise in that deposition and asked questions about matters that the Jones lawyers already knew the answers to. As you heard yesterday, the Jones lawyers had been briefed the night before by Linda Tripp. So they were asking questions of President Clinton in the course of this deposition about the relationship to which they already had the answers. That kind of ambush is profoundly unfair, and it is one reason that Congressman GRAHAM said that he voted against this article in committee—the surprise. He was the only Republican to do so. He was the only Republican to vote against any article, and the decision of the House to follow Congressman GRAHAM's leadership and to reject this article showed great wisdom and judgment.

But apparently that is not to be the end of the matter when it comes to allegations of perjury in the Jones deposition. In subpart 2 of article I, the managers seek to reintroduce the issue of the President's testimony in the case by alleging that when the President testified before the grand jury, he testified falsely when he said that he tried to testify truthfully in the Jones deposition. Congressman ROGAN, Mr. Manager ROGAN has claimed that the President's answers ratified and reaffirmed and put into issue all of his answers in the Jones deposition when he testified that he believed he did not violate the law in the Jones deposition.

"This is perjurious testimony," said Manager ROGAN, "because the record is clear"—I am quoting—that he did not testify truthfully in the deposition, and by that bootstrapping mechanism, we are now in a litigation about whether every single statement that the President made in the Jones deposition was or was not truthful to determine whether or not the President's testimony that he was truthful is or is not truthful.

But, in fact, President Clinton did not ratify, he did not reaffirm his Jones testimony when he testified before the grand jury, and you will see that when you read the transcript of his testimony. Quite the contrary is true. If you look at that transcript carefully, you will find that without admitting wrongdoing, the President elaborated, he modified, he amended and he clarified his testimony in Jones. And when Mr. Schippers made his closing argument to the House Judiciary Committee, I think he used the truthfulness, on one occasion, of the President's testimony before the grand jury to support his argument that the President lied in Jones.

But actually the specific wording of subpart 2 gives us no specific information and is not illuminating, and we turn to the managers' trial brief to ascertain precisely what the argument is. There the managers allege that the President falsely testified that he answered questions truthfully at his deposition concerning, among other things, whether he had been alone with Ms. Lewinsky. I begin by saying, again, this allegation was not included in the Starr referral. Why? Because it is based on a total misconception of the President's grand jury testimony.

As I referred to earlier, this is exhibit No. 7, I believe, and it shows you some evidence—this is not the complete evidence of his testimony about being alone. The prosecutors asked the President many questions about being alone with Ms. Lewinsky, but they never asked him about the Jones testimony. They asked him about whether he was alone; he never was asked about the Jones testimony:

"When I was alone with Ms. Lewinsky on certain occasions," it says right there—"When I was alone . . ."

Let me ask you, Mr. President, you indicate in your statement that you were alone with Ms. Lewinsky. Is that right?

Yes, sir.

How many times were you alone with Ms. Lewinsky?

Let me begin with the correct answer. I don't know for sure. But if you would like me to give an educated guess, I will do that. . . .

And then you will see over two or three pages of testimony he tries to recall times and incidents when he was alone with Ms. Lewinsky.

And so the prosecutor says, "So if I could summarize your testimony, approximately 5 times you saw her before she left the White House, approximately 9 times after she left the employment?" "I know there were several times in '97," the President said. "I would think that would sound about right."

This is not a man denying that he was alone with Ms. Lewinsky, but he was not asked about his testimony on that topic when he testified in the Jones case.

Now, the managers further allege that the President's testimony before the grand jury that he testified truthfully at his deposition was a lie. In fact, his testimony there that they quote as being false was this: "My goal in this deposition was to be truthful but not particularly helpful." "My goal in this deposition to be truthful," they say, is false. "I was determined to walk through the minefield of this deposition without violating the law, and I believe I did." His statement that "I believe I did," they say, means that everything that he said in the Jones deposition was true. The President's

statement that he set a goal and believes—believes—he has met it is, according to the managers, perjurious for which he should be removed from office.

And it is through this device that the managers seek to achieve, by indirection, what they were specifically forbidden to do by the direct vote of the House of Representatives. By claiming that the President's assertions in the grand jury were false when he described his state of mind—"I believed," "I tried," "I was determined," "my goal was"—the managers seek to put all of the President's evasive and misleading testimony in the Jones deposition in issue. That effort, I submit, should be rejected.

Let me cite one rather painful example in support of the President's testimony that he, in fact, tried to answer accurately when he testified in the grand jury. He was asked whether or not he ever had sexual relations with Gennifer Flowers, and he answered, "Yes," that he had, under the definition of sexual relations being used in the Jones case. He later said that he would rather have taken a whipping in public than to acknowledge that relation because he knew it would be leaked to the public, which it was.

Now, if he didn't care about telling the truth in that deposition, if he went into that deposition with the intention of denying anything and everything that was embarrassing, if he really had decided in his own mind that whatever the Jones lawyers asked him, he was not going to be truthful about it, he never would have testified the way he did about Gennifer Flowers.

Now, ladies and gentlemen of the Senate, the President does not claim—and he never was asked in front of the grand jury, and he never asserts in front of the grand jury—that all his testimony in the Jones deposition was truthful. His statement was that he tried to be accurate, that his goal was to be truthful, but that statement is not a broad reaffirmation of the accuracy of all his testimony, despite the House managers' desire to characterize it as such. Those were accurate descriptions of the President's state of mind at the time he testified.

The real issue here is not the truth of the underlying statements made by the President in the Jones deposition but the President's explanation of those statements, whether his description of his efforts to walk this fine line that he gave to the grand jury was accurate. Whether you agree or disagree with the President's view that he was or was not successful in his undertaking not to break the law and to be lawful, that argument is an argument. And it is not a secret argument. He has that out there open for everybody to see. That argument is hardly a proper subject for a perjury claim. And his simple restatement of his legal position to the members of the grand jury is hardly the stuff of a perjury prosecution.

Actually, if you look at the President's grand jury testimony, you will see that he provided much more complete, much more accurate, much more reliable testimony about many of the topics covered in Jones. And the notion that he reaffirmed, confirmed, or ratified his Jones testimony is just unsupported by the evidence.

It would be astonishing to think that the Senate would conclude that the President should be removed from office because in the grand jury he gave voice to a legal opinion and stated his own per-

sonal belief that his testimony in the Jones deposition did not break the law.

I submit to you that if that was the case, the Office of the Independent Counsel would have included that in the referral, and they did not. In fact, let me just say right now none of the rest of the allegations that we are going to be discussing in the article that we are talking about today are included in the Starr referral. The rest are entirely the product of the managers.

Subpart 3, which is the exhibit No. 19. This has to do with the President's testimony about statements he allowed his attorney to make to a Federal judge in the Jones case. And you saw the tape of that testimony last week.

According to the trial memorandum, the President remained silent during the Jones deposition at a time when his counsel, Mr. Bennett, made false and misleading representations to the court about Ms. Lewinsky's affidavit. Pointing to the Lewinsky affidavit, Bennett stated that Ms. Lewinsky had filed an affidavit "saying that there is absolutely no sex of any kind in any manner, shape or form with President Clinton." And when asked by the Independent Counsel about this moments before the grand jury, the President testified that he hadn't paid much attention, that he was thinking about his testimony. And he says this four or five times. This is not just once; he says this four or five times. He is emphatic that he didn't pay attention and the words went by him.

Now, in support of their claim that the President lied when he said he was not paying attention, the House managers point to the videotape record of the President's testimony which shows, they argue, that the President was "looking directly at Mr. Bennett, [and] paying close attention to his argument to Judge Wright."

This allegation, not included in the Starr Report, is even more curious than the previous one because it is based on a novel legal theory which jeopardizes all lawyers in this building, which is that a client has an enforceable obligation to correct his attorney's alleged misstatements. And if he doesn't make those corrections, he—the client—will be held liable to charges of perjury and obstruction of justice.

The charge is that the President misled the grand jury when he said that he was not paying attention. While the videotape shows that the President was looking in Bennett's direction, there is nothing that can be read in his face or in his body language to show that he is listening to, understanding, or affirming Mr. Bennett's statement—no nod of the head, no movement at all, no comment, nothing.

What happens is this: Mr. Bennett makes his comment and is interrupted by the judge. She says, "No, just a minute, let me make my ruling," before Mr. Bennett has a chance to complete his argument. And after interrupting Mr. Bennett, the judge makes a lengthy observation, followed by an intensive exchange among all counsel and the judge. The moment is fleeting. It goes by very, very quickly.

The moment occurs not at the beginning of the deposition, but well into it, after President Clinton has in fact been subjected to questions about Monica Lewinsky. Mr. Clinton, as you know, has been surprised by the direction the case has taken and the fact

that the exclusive focus of these questions is on Lewinsky. He did not know this was coming. He did not expect it. As he put it in his grand jury testimony, "I had no way of knowing that they would ask me all these detailed questions. I did the best I could to answer them."

At that moment, because the questions had focused on Ms. Lewinsky—to the exclusion of everything and everybody else, including the Jones case—questions about the Jones case didn't occur until much, much later and near the end of the deposition. The President must have realized that the Jones attorneys probably knew about his relationship with Monica Lewinsky. He obviously had not taken any steps to prepare to answer questions about that relationship and he was clearly caught off guard.

It is not farfetched to think at that moment his mind was flooded with thoughts about how to get through the deposition. It is not implausible to think at that moment the President was preoccupied, watching his lawyer do his job, and not listening carefully and not tracking word by word the substance of the exchange.

Those of you who have practiced law and have represented individuals under stress at depositions know that this can happen. Is it really reasonable to think that you can tell beyond a reasonable doubt what is going on in the President's mind by looking at the videotape? And if you can and you are convinced he has heard, does he have any obligation to say anything? If he doesn't, then this case, this allegation, amounts to nothing.

It is hard to believe that the House managers—if it did, I think the Starr people would have brought it—it is hard to believe that the House managers believe that the Senate should conclude that the President committed perjury and should be removed from his office on the basis of his silence, his failure to speak.

Now, there is a second allegation associated with this incident, one that Congressman ROGAN asserted in his presentation, but is not discussed in the trial memorandum. This has to do with the President's now famous testimony about Mr. Bennett's statement about Ms. Lewinsky's affidavit. It depends upon what the meaning of "is" is. Let's talk about that just a minute.

While raising questions about the good faith of the Jones attorney in asking questions about Ms. Lewinsky—this is in the Jones deposition—while raising questions about the good faith of the Jones attorneys and asking questions about Ms. Lewinsky and not knowing if these same lawyers actually know the answers to the questions, Mr. Bennett said, referring to the Jones lawyers, "Counsel is fully aware that [Ms. Lewinsky] has filed an affidavit . . . saying that there is absolutely no sex." "There is absolutely no sex of any kind in any manner, shape or form with President Clinton."

Now, during his grand jury testimony, the independent counsel reads that statement to the President. He gets President Clinton to agree that the statement was made by the President's attorney in front of Judge Wright. And here is what the independent counsel says to President Clinton in the grand jury after reading Mr. Bennett's words:

> That statement is a completely false statement. Whether or not Mr. Bennett knew of your relationship with Ms. Lewinsky, the statement that there is "no sex of any kind, manner shape or form with President Clinton" was an utterly false statement.

And he asks the President, "Is that correct?" At that point, pausing just a moment for reflection, President Clinton gives his opinion and explains that opinion.

To understand the President's argument, you must know first that there has been no inappropriate contact with Ms. Lewinsky at the time of that deposition for, according to his recollection, almost a year; according to hers, 10 months. So it is not in dispute at that moment in time and for previous months there has been. And there is no sexual relationship currently, even though there had been one in 1995, 1996, and in the early part of 1997, some months back.

Now, the President makes a political mistake here and gives in to his instinct to play his own lawyer, to be his own advocate. You may find it frustrating, you may find it irritating, when you watch him do this, but he is not committing perjury; he is committing the offense of nit-picking and arguing with the prosecutors. He is arguing a point, and so he says that whether Mr. Bennett's statement is false depends on what the meaning of "is" is. Mr. Bennett's statement is true if "is" means an ongoing relationship, but Mr. Bennett's statement is false if "is" means at any time ever in time.

Now the President's answer to Mr. Bennett's question and the statements that follow it amount to an annoying argument over the interpretation of what Mr. Bennett said, focused on the tense of the verb. And the President is being his own lawyer. The grounds he has argued are fully stated, fully explained. There is no mystery. He is not concealing anything. Making this argument is not perjury.

There is one final point to make about this incident because, again, I think there was a mischaracterization of what the President actually said in the grand jury. He didn't say that at the time Mr. Bennett made that statement in the Jones deposition, he caught the word "is" and recognized, "Ah-ha, I've got an exit. That makes it accurate." Quite to the contrary. He is clear in front of the grand jury when he says that he didn't even notice this issue until he was reviewing the transcript in preparation for his grand jury testimony. He is clear in pointing out the argument that he is making is one that he just discovered.

Let me quote from that portion of his testimony which appears on pages 512 and 513 which make it clear that he wasn't ever claiming that he spotted that verb tense at the time in the Jones deposition and his silence or his answer was based on spotting the verb tense then. This is something he discovered, noticed, and, as a lawyer, argued in the grand jury. "I never even focused on that"—meaning that issue of a verb tense—"until I read it in this transcript in preparation for this testimony . . ." "I wasn't trying to give you a cute answer that I obviously wasn't involved in anything improper in the deposition. I was trying to tell you generally speaking in the present tense if someone said that, that would be true. But I don't know what Mr. Bennett had in mind. I don't know."

Now, the President was open and honest and obvious in what he was arguing, and that is precisely what he was doing on this occasion. He was arguing a point that, as a technical matter, Bennett's statement could be read as being accurate.

I point out again that this particular allegation was not included in Mr. Starr's referral. An argument that is identified as an argument, the grounds of which are clear to all, is not the basis for a perjury prosecution.

Subpart 4 of this article has to do with false and misleading testimony about the President's efforts, allegedly, to influence witnesses and to impede discovery in Jones. Now, as I have said before, at the beginning of my presentation, the fourth category of allegedly perjurious, false, and misleading grand jury testimony overlaps with article II of allegations of obstruction of justice.

I will say right now that Cheryl Mills will be appearing here when I have completed and David Kendall tomorrow to present the arguments on article II, why the President should not be found guilty and is not guilty of the allegations of obstruction of justice in article II.

According to the managers' trial brief, making this argument that he also perjured himself about these matters, they claim these lies are the most troubling as the President used them in an attempt to conceal his criminal actions. One begins with a self-evident proposition—at least, to us—that the President did not obstruct justice, and we hope you agree with us by the end of the day tomorrow when we explain the evidence. But his explanation, if that is so, of what he did or didn't do to the grand jury were always truthful. Put another way, if the President didn't obstruct justice, he also didn't commit perjury when he denied it.

According to the managers, the general language of this provision of subpart 4 is supposed to include a wide range of allegations, so we have some subparts of the subpart. But none of these allegations, let me say, ladies and gentlemen of the Senate, none of these was included or thought sufficiently credible to be included in the OIC referral, nor were these allegations included in Mr. Schippers' initial presentation to the Judiciary Committee. They are nothing more than an effort to inflate the number of perjury allegations by converting every answer that the President gave to the grand jury about the subject matter of article II into a new count of perjury, the double billing, if you will. All of these allegations are more properly part of our defense on the obstruction of justice allegation. But I will try to respond briefly to the allegation of perjury, his testimony about Monica Lewinsky's false affidavit. This grows out of the President's conversation with Ms. Lewinsky, allegedly, on December 17, in which he is said to have corruptly encouraged Ms. Lewinsky to execute a sworn affidavit that he knew to be perjurious, false, and misleading.

In that famous late-night telephone conversation, Ms. Lewinsky asked the President what she could do if she were subpoenaed in the Jones case. According to Ms. Lewinsky, the President responded, "Well, maybe you can sign an affidavit." That is what Ms. Lewinsky's recollection is.

Now, in the grand jury, the President was repeatedly questioned about this conversation and he repeatedly answered emphatically. This is another example where it is not once or twice, it is three or four times. He truly thought he said that she could have sworn out an honest affidavit. The managers claim that when he said that—that he thought that she could swear out an honest affidavit—the President perjured himself.

Now, the President's testimony in the grand jury on this point is not in any way cautious or qualified. He makes similar statements on four different occasions during that testimony, concluding with this tape:

> I have already told you that I felt strongly that she could issue—that she could execute an affidavit that would be factually truthful, that might get her out of having to testify. And did I hope she would be able to get out of testifying on the affidavit? Absolutely. Did I want her to execute a false affidavit? No, I did not.

Now, the heart of the managers' argument is that there was no way that an honest affidavit can achieve what the President and Ms. Lewinsky both wanted to have achieved, which was to avoid her having to testify. And so the managers claim the President's statement that he thought she could make out an honest affidavit and avoid testifying in the Jones case about her relationship with the President is perjury.

Once again, the managers claim that the President is guilty of perjury because he is testifying falsely about his state of mind. It wasn't true, they argued, that he really thought she could make out and sign and execute an honest affidavit; he could not have thought that; he wanted and expected her to lie in that affidavit, and that is why he suggested, "Well, you can always file an affidavit."

Now, Ms. Lewinsky's inappropriate contact with the President was consensual. An affidavit being sought in a case involving allegations of sexual harassment that says there was no harassment, no effort to impose unwanted sexual overtures, would have been an affidavit that Ms. Lewinsky could honestly execute—an affidavit stating that she had never been on the receiving end of any unwanted sexual overtures from the President and that she had never been harassed.

Second, both Ms. Lewinsky and the President had a definition of "sexual relations" that would have allowed Ms. Lewinsky, in her own mind, honestly and accurately, in their view, to swear an affidavit that she had never had sexual relations—meaning what she meant in the exhibits we distributed—with the President. She would have thought that was a factual and accurate affidavit, and so would the President at that time.

Third, it is clear that Ms. Lewinsky understood that it was not necessary to volunteer information in an affidavit, but, on the contrary, she would try to give only that small but true portion of the whole story. She talks about this at some length in her telephone conversation with Linda Tripp. In her words, the goal of an affidavit is to be as benign as possible, to avoid being deposed. She is her own operator; she knows what she is doing.

Please recognize what the managers are trying to do here. In article II, they accuse the President of obstructing justice by suggesting that Ms. Lewinsky should file an affidavit, knowing full well that the affidavit would have to be false. And when the President, under oath in the grand jury, denies that he believed that the affidavit would have to be false, they accuse him of perjury.

The two allegations are inextricably intermingled, and if you conclude, as you should, that there is no evidence to support the underlying allegation, that the underlying offense is based on nothing but pure conjecture, you will conclude that the perjury charge is nothing more than an attempt to get two bites at the same apple.

The second element is the President's testimony about the gifts. The managers' trial brief says that the President committed perjury when he testified that he told Ms. Lewinsky that if the Jones lawyers requested the gifts that he had given to her, she should provide them. Atypically, the brief quotes the President's precise language which is at issue in this particular allegation:

> And I told her that if they asked her for gifts, she would have to give them whatever she had. That's what the law was.

This testimony, the managers claim, is false. They say he never said that, and that when he said it in the grand jury, he is guilty of perjury.

Now, the only evidence offered to support the allegation that the President testified falsely before the grand jury on this topic is, A, that Ms. Lewinsky raised a question with the President as to what she should do with the gifts. You have heard a lot of testimony about that, which only establishes one thing—that the topic came up. That is totally consistent with the President's testimony and has no bearing whatsoever on whether the President did or did not say what he claims to have said.

The second piece of evidence is that Ms. Currie ended up picking up the gifts and taking them home with her, which, no matter how you might try to spin that, simply cannot be construed as evidence showing that the President perjured himself when he told the grand jury that he had given this advice to Ms. Lewinsky. "Tinkers to Evers to Chance."

This allegation is all conjecture and there is no evidence. It is really astonishing that the managers would seriously include it in their case. Kenneth Starr did not, and it was not discussed or debated by the House Judiciary Committee.

The majority's report makes another entirely different allegation about this matter. There, the House Republicans cite the President's denial—this is a denial, not an affirmation. The first has to do with testimony in front of the grand jury that he said something to Monica Lewinsky. The second has to do with a denial that he ever instructed Ms. Currie to pick up the gifts. From the transcript of the President's grand jury testimony, I quote:

Question: After you gave Monica Lewinsky the gifts on December 28, did you speak with your secretary, Ms. Currie, and ask her to pick up a box of gifts that were some compilation of gifts that Ms. Lewinsky would have——
Answer: No, sir, I didn't do that.
Question: —to give to Ms. Currie?
Answer: I did not do that.

According to the majority's report, this testimony was perjurious, false, and misleading. The problem is, this allegation is similar to the problem with the previous one, only greater. In the first allegation, there is no one who testified that the President did not say what he testified under oath he said, and in this allegation there is no one who testified that the President said what he testified under oath he did not say.

In other words, the House managers offer you this argument: Nobody says the President made this statement; we just think he did; so we are charging him with perjury for denying it, and you should remove him from office, despite the absence of evidence.

Again, this was not included in the Starr referral, and we wonder how this kind of an allegation can seriously be brought against the President of the United States.

The President's testimony about his January 18 conversation with Ms. Currie: The President's meeting and conversation with Betty Currie on Sunday, January 18, is an essential element in the allegation of obstruction as set forth in article II, and you will learn more about that from Cheryl Mills today. Because the Office of Independent Counsel spent so much time on this matter during President Clinton's grand jury testimony—they examined the President on this topic on four separate occasions during that 4-hour session—it was inevitable that the managers would find some way, somehow to include his testimony about this matter in article I. Just parenthetically, this too is an allegation that the Office of Independent Counsel did not see fit to make in its Referral to the House.

And so, once again, we begin with a question: What is it precisely that the President said that is at the heart of this allegation of perjury? In his presentation last Thursday, Congressman ROGAN quoted lengthy passages from a number of President Clinton's answers on the subject but failed to identify anything specific. Finally Congressman ROGAN said this:

When [the President] testified he was only making statements to Ms. Currie to ascertain what the facts were, trying to ascertain what Betty's perception was, this statement was false, and it was perjurious. We know it was perjury because the president called Ms. Currie into the White House the day after his deposition to tell her—not to ask her, to tell her—that he was never alone with Monica Lewinsky. To tell her that Ms. Currie could always hear or see them, and to tell her that he never touched Monica Lewinsky. These were false statements, and he knew that the statements were false at the time he made them to Betty Currie.

But that is not true; the President clearly asked her questions as well as made declarative statements.

I confess to some confusion about what perjury Congressman ROGAN is really alleging here.

It seems to me that he has moved from the world of perjury in article I to the world of obstruction, which is Cheryl and David's article II.

The trial brief is more specific. They claim that the testimony was false when the President went in and said that he was "trying to refresh [his] memory about what the facts were;" when he said that he wanted to "know what Betty's memory was about what she heard;" and when he said he was "trying to get as much information as he could." The purpose of the meeting and the conversation, according to the trial brief, was to influence Betty Currie's testimony, not to gather information.

In truth, the President gave a number of different reasons to the grand jury for seeking out Betty Currie and talking to her about Monica Lewinsky, and it is totally plausible to conclude that the last thing on the President's mind at that particular moment was Betty Currie's potential role as a witness in a Federal court.

More simply, the facts are that in making this particular allegation, the managers have come up with two, three, or four different statements by the President that they claim are perjurious which makes it a total distortion of the President's answer. There were many questions, and many answers, and then the reasons he gave for seeking out Betty Currie. Kenneth Starr made no such claim in his referral.

Finally, the President's testimony about allegations that he influenced his aides; to influence; that he lied to his aide—let me get it right. The allegation is that when the President testified in front of the grand jury and denied that he misled his aides or told them false things, that it was "perjurious, false and misleading testimony" because he was really trying to use them to obstruct justice and influence the grand jury. The President testified in much greater detail on this topic about the details about his conversation with his aides than the managers suggest. And he never said that he only told them "true things."

In fact, if you look at that testimony—and I urge you to do so; it is another topic that will take up some time—the President acknowledged that he misled an aide and he apologized for it. And he testified that actually he couldn't remember much of what he told his aide. He never challenged or denied what John Podesta said that he told him. He told the grand jury. He told them. And he never challenged Sidney Blumenthal's version of what he said to Mr. Blumenthal. There is absolutely no evidence to suggest that the President intended to deceive the grand jury on this matter because he never denied saying what they said he told them about his relationship. And that is what he told them. It was not just true things. He told them inaccurate things. He did not give the testimony that Congressman ROGAN claims that he gave. He did not say that he did not mislead his aides. He said that he had, in fact, misled his aide. He does say that he tried to tell true things, but he does not conceal the nature of the true things he is talking about.

So you can make up your own mind whether you agree with his characterization that there are true things. He described them for all to see and understand. For example, he says that he told his aides, "I never had sex with her," as it was defined in his mind. You may disagree with his characterization of what he told them as being a true thing, but he certainly doesn't conceal the basis of his belief that it is true. He also said that he was not involved with

Ms. Lewinsky in any sexual way. And he explains by use of the present tense he thought that was a true thing.

But the materiality of this alleged perjury is really a mystery. That the President misled his aide is not an issue. That his aides became witnesses before the grand jury and that the President knew they would probably be called, it is simply not in dispute. Nor does the President dispute the testimony of Podesta and Blumenthal. The only issue here is whether the President, when he discussed Monica Lewinsky with these aides, was seeking to influence the grand jury's proceedings by giving his aides false information. This is not a perjury challenge. This is a subject to be dealt with in the context of article II and obstruction of justice.

What does it all add up to? Mr. Ruff had it right. Beneath the surface of this article, this first article, there is really a witches' brew of allegations pulled from all corners of Bill Clinton's grand jury testimony. He is alleged to have lied to the grand jury when he used innocent words to tell about his improper contacts with Ms. Lewinsky. Truly, these are frivolous allegations. He is alleged to have lied about the date his improper activity with Ms. Lewinsky began, and whether it was preceded by any period of friendship. These, too, are frivolous allegations. The President didn't claim he said that, but even if he did, the allegations are of no import. He is alleged to have lied when he explained his understanding of the Jones definition and testified that his genuine belief was that the definition did not include the activity that he and Ms. Lewinsky had engaged in.

Experienced prosecutors say that his interpretation was reasonable. He is alleged to have lied about the intimate details of his activity with Ms. Lewinsky. She says one thing; he says another. This is precisely the kind of oath against oath swearing match that is never prosecuted in the real world. Given the President's overall testimony before the grand jury, of what real significance is this disagreement? He is accused of ratifying his every sentence in the Jones deposition. And by saying that his goal was to be truthful, he is said to have lied. But no one should be charged with perjury for asserting innocence or proclaiming that he was trying to be truthful, particularly when all the evidence supports his claim.

And finally, he is accused of lying about a variety of actions aimed at concealing his improper and embarrassing relationship with Ms. Lewinsky when each one of those actions was motivated by nothing more than his desire to protect himself and his family from embarrassment, if not destruction.

Think just for a moment and ask yourself whether these allegations about this testimony is really an effort to vindicate the rule of law, or is it something else? Ask yourself what coming generations will think about these charges. If you convict and remove President Clinton on the basis of these allegations, no President of the United States will ever be safe from impeachment again—and it will happen—and people will look back at us, and they will say we should have stopped it then before it was too late. Don't let this happen to our country.

Before I conclude, I would like to respond to one specific argument that we heard last week. One of the arguments most frequently employed to urge the President's removal is that in the

United States of America no one is above the law; that if the Senate does not take action against the President and convict him and remove him from office, we will not be keeping faith with that principle.

Members of the Senate, I could not disagree more with that formulation of this issue. The principle that "No one is above the law" is sacred. The idea that the wealthy or the powerful or the famous should receive preferential treatment under the law—treatment that is different from that accorded to the poor and the weak—is anathema to everything that is great and good and special about the United States. It is anathema to our values and to our national ideals.

I agree with Mr. HYDE. Our fathers and grandfathers—going back to the American Revolution—fought and died to defend the principle of "equal justice under law." This principle is not only at the core of Anglo-Saxon jurisprudence, it is part of the very foundation of our civic society.

But the framers, in their genius, did not design or intend the awesome power of impeachment and removal for the purpose of vindicating the rule of law. They believed that the power of impeachment and removal should be used for a different purpose—to protect the body politic, to protect the Government itself from a President whose conduct was so abusive as to constitute an assault on, a threat to the entire system.

We are all rereading the Constitution. We are all looking at "The Federalist Papers" again. And when we do that, we realize that the framers of the Constitution considered the question of what to do when the highest officials of Government, the President or the Vice President, are charged with misconduct. And back then they made an important distinction that we should recognize and respect today between conduct in official capacity and conduct in private capacity. They created two different ways of dealing with these two very different kinds of conduct. Impeachment was to protect the country from abuse of official power by an out-of-control President or by someone who was so abusive and assaultive on the system of Government that he had to be removed to protect the Government.

The criminal justice system was to vindicate the rule of law, and the clearest indication that one is not meant to be a substitute for the other can be found in article I, section 3, clause 7 of the Constitution:

> Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States: but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment, according to Law.

If the President's conduct in his official capacity is so grave as to be a serious assault upon the system of Government, so serious as to subvert our constitutional order, so serious as to require the Nation to be protected from the damage that he would do if he were to continue in office, the remedy is impeachment and removal by a political process.

If, however, the President's conduct does not implicate the office or the powers of the Presidency, the remedy is a legal process involving prosecution, conviction, and punishment in the courts. In

this fashion the principle is vindicated that "no man is above the law," for in the criminal justice system the President will be treated like any other citizen and accountable to the rule of law.

The great scholar and justice, James Wilson, said it best when he wrote:

> Far from being above the laws, [the President] is amenable to them in his private character as a citizen, and in his public character by impeachment.

And more recently, just last November, Senator SPECTER made the same point with equal eloquence when he proposed:

> . . . abandoning Impeachment and, after the President leaves office, holding him accountable in the same way any other person would be; through indictment and prosecution for any Federal crimes established by the evidence.

President Clinton should not be above the law, he is not above the law, and he will not be above the law. As Senator SPECTER rightly stated, the criminal justice system stands ready to perform that function and to hold the President accountable at some later date. And like any other citizen, William Jefferson Clinton can be prosecuted for any crimes he is alleged to have committed throughout his term of office.

It would be a profound mistake with lasting consequences for the Members of this body, in the throes of a highly charged impeachment trial, to conclude that only the Senate rather than the criminal justice system should be the chosen instrument of the Constitution to fulfill that principle. It is not up to the Senate to remove the President from office for private conduct that does not involve abuse of Presidential power and does not seriously disrupt the President's capacity to function as Chief Executive of the United States. And it would be folly to think that to vindicate the rule of law in the United States the Senate is obliged to reverse a national election and remove a President from office before the completion of his term. If there is sufficient evidence to warrant a criminal prosecution, this President, when he returns to private life, can be indicted, prosecuted, and tried and, if convicted, punished like any other citizen.

I end by making a point that should never be far from our thoughts as we continue through this trial. There is no moment in our national public life more sacred than the ritual of casting one's vote in a Presidential election. It is amazing, almost miraculous, that so powerful and transforming an event can occur so quietly in a great and populous nation. The act is invisible to outside eyes. On one designated day, millions of Americans go to their local polling places—to schools, firehouses, police stations, and municipal buildings throughout the Nation—to cast their vote for President. It is a moment of high purpose, the only political act that we perform together as a nation.

And so it is that we believe, short of a declaration of war, there is nothing more serious for our elected representatives to contemplate than, through the process of impeachment, to undo the results of a national election and to remove the man chosen by the American people to be their President.

Over the past week, we have heard many speeches about the Constitution and the rule of law and the many sacrifices that the American people have made throughout their history to defend

their rights and their freedoms. Surely, among the most important of those rights and freedoms is the right—freely, fairly, and openly—to cast one's vote in a Presidential election and have the results of that election respected and obeyed.

Can anyone imagine anything more damaging to the Constitution of the United States than for a Presidential election to be reversed for conduct that the vast majority of the American people does not believe warrants the President's removal from office?

In the entire history of the United States, we have never been at this juncture before. We have never come so close to the final act of removing an elected President than we are at this moment in time.

William Jefferson Clinton was elected freely, fairly, and openly by the American people to be President. We dare not reverse that decision without good and just cause. And we dare not take that step unless the people who spoke agree that such drastic action is justified. The damage to our political discourse for years, decades, would be terrible to contemplate.

In the course of this impeachment process, we have also devoted a good deal of time and attention to a discussion of precedents that involve the impeachment and removal of Federal judges. For the President, we have argued that when it comes to applying constitutional standards for impeachment, judges are different. We think that the Constitution implicitly recognizes that distinction.

I would like to change the focus for a moment and look at the way we think the legislative branch of our Government also recognizes that distinction. History shows, I think, that it has been easier for Congress to impeach and remove a Federal judge from office than to discharge a Member of the House or Senate, and maybe that is as it should be. When confronted with misconduct by one of its Members, Congress has rarely been willing to negate the popular will as expressed in congressional elections. In truth, the Congress has, for the most part, simply declined to take that step.

Perhaps rightly so, because of the greater deference paid to elected, as opposed to appointed, officials or judges. Perhaps because Presidents and Senators and Representatives are periodically elected to defined terms, as opposed to life terms, the Congress has chosen to rely upon the public to work its will through the electoral system. That deference is warranted, I submit, and it should be a factor in your deliberations.

In 210 years of history and throughout 105 Congresses, only 4 Members of the House have ever been expelled by that body. As for the Senate, 15 Senators—the first in 1797, the remaining 14 during the Civil War.

My point is a simple one. Because of the sanctity of elections and the regularity of elections, and because of the heavy burden that must be carried before reversing the will of the people, decisions to remove elected officeholders have been and should be, at least in some degree, based on factors that are different than the ones used for judges appointed for life and who serve for good behavior. By its own conduct throughout its own history, Congress seems to agree with this point.

I come from the State of Vermont, and if you have been to Vermont, you know that wherever you go across that State, from

the smallest squares in the smallest towns to the larger parks, and what we like to think of as our cities, you come across monuments celebrating the American Union. One of the things that Vermont children learn first is that we were and are the 14th State of the Union and that our forebears fought to create this Nation and to preserve it.

So we in our history have shown that there are two things that we care about: We care about our American Union and we care about equal rights for all citizens under the law. And one of the rights that is most precious to every American is the right to choose our leaders in free elections. That right, the equal right to vote with confidence that the outcome will be respected, is fundamental to our values, to our national unity and identity.

Ladies and gentlemen of the Senate, you must do your duty as you see it, as you see the law and facts and the evidence. But, truly, these articles do not justify the nullification of the American people's free choice in a national election. I appeal to you, do not turn your back on those millions of Americans who cast their votes in the belief that they, and they alone, decide who will lead this country as President. Do not throw our politics into the darkness of endless recrimination. Do not inject a poison of bitter partisanship into the body politic which, like a virus, can move through our national bloodstream for years to come with results none can know or calculate.

Do not let this case and these charges, as flawed and as unfair as they are, destroy a fundamental underpinning of American democracy, the right of the people, and no one else, to select the President of the United States.

William Jefferson Clinton is not guilty of obstruction of justice. He is not guilty of perjury. He must not be removed.

Thank you very much.

The CHIEF JUSTICE. The Chair recognizes the majority leader.

RECESS

Mr. LOTT. Mr. Chief Justice, I ask unanimous consent that we recess the proceedings now. We will begin promptly at 5 minutes after 4.

There being no objection, the Senate, at 3:53 p.m., recessed until 4:07 p.m.; whereupon, the Senate reassembled when called to order by the Chief Justice.

The CHIEF JUSTICE. The Chair recognizes the majority leader.

Mr. LOTT. Thank you, Mr. Chief Justice. I believe we are ready to resume with the presentation of Counsel Cheryl Mills.

The CHIEF JUSTICE. The Chair recognizes Ms. Counsel Mills.

Ms. Counsel MILLS. Mr. Chief Justice, managers from the House of Representatives, Members of the Senate, good afternoon. My name is Cheryl Mills, and I am deputy counsel to the President. I am honored to be here today on behalf of the President to address you.

Today, incidentally, marks my 6-year anniversary in the White House. I am very proud to have had the opportunity to serve our country and this President.

It is a particular honor for me to stand on the Senate floor today. I am an Army brat. My father served in the Army for 27 years. I

grew up in the military world, where opportunity was a reality and not just a slogan. The very fact that the daughter of an Army officer from Richmond, VA, the very fact that I can represent the President of the United States on the floor of the Senate of the United States, is powerful proof that the American dream lives.

I am going to take some time to address two of the allegations of obstruction of justice against President Clinton in article II: First, the allegation related to the box of gifts that Ms. Lewinsky asked Ms. Currie to hold for her; second, the allegation related to the President's conversation with Ms. Currie after his deposition in the Jones case. Tomorrow my colleague, Mr. Kendall, will address the remaining allegations of obstruction of justice.

Over the course of the House managers' presentation last week, I confess I was struck by how often they referred to the significance of the rule of law. House Manager SENSENBRENNER, for example, quoted President Theodore Roosevelt stating, "No man is above the law and no man is below it. . . ." As a lawyer, as an American, and as an African American, it is a principle in which I believe to the very core of my being. It is what many have struggled and died for, the right to be equal before the law without regard to race or gender or ethnicity, disability, privilege, or station in life. The rule of law applies to the weak and the strong, the rich and the poor, the powerful and the powerless.

If you love the rule of law, you must love it in all of its applications. You cannot only love it when it provides the verdict you seek. You must love it when the verdict goes against you as well. We cannot uphold the rule of law only when it is consistent with our beliefs. We must uphold it even when it protects behavior that we don't like or is unattractive or is not admirable or that might even be hurtful. And we cannot say we love the rule of law but dismiss arguments that appeal to the rule of law as legalisms or legal hairsplitting.

I say all of this because not only the facts but the law of obstruction of justice protects the President. It does not condemn him. And the managers cannot deny the President the protection that is provided by the law and still insist that they are acting to uphold the law. His conduct, while clearly not attractive, or admirable, is not criminal. That is the rule of law in this case.

So as my colleagues and I discuss obstruction of justice against the President, we ask only that the rule of law be applied equally, neutrally, fairly, not emotionally or personally or politically. If it is applied equally, the rule of law exonerates Bill Clinton.

That said, I want to begin where Manager HUTCHINSON left off this weekend during a television program. The evidence does not support conviction of the President on any of the allegations of obstruction of justice. On the record now before the Senate, and that which was before the House, Manager HUTCHINSON said, "I don't think you could obtain a conviction or that I could fairly ask for a conviction." We agree. We agree. There are good reasons for Manager HUTCHINSON's judgment. And the most important, the evidence in the record and the law on the books, does not support the conclusion that the President obstructed justice.

Now, I know that Manager MCCOLLUM begged you in his presentation to not pay attention to details when the President's case was

put forward. He went so far as to implore you not to get hung up on some of the details when the President and his attorneys try to explain this stuff—"The big picture is what you need to keep in mind, not the compartmentalization." Manager MCCOLLUM was telling you, in effect, not to pay attention to the evidence that exonerates the President—"Don't pay attention to the details that take this case out of the realm of activities that are prohibited by the law."

But the rule of law depends upon the details because it depends upon the facts and it depends upon the fairness of the persons called to judge the facts. I want to walk through the big picture and I want to walk through the facts.

I first want to discuss the real story, and then I want to focus on all those inconvenient details, or what Manager BUYER called those stubborn facts that didn't fit the big picture that the House managers want you to see.

Manager BARR suggested the fit between the facts and the law against the President in this case is as precise as the finely tuned mechanism of a Swiss watch. But when you put the facts together, they don't quite make out a Swiss watch; in fact, they might not even make good sausage.

So what is the big picture? The big picture is this: The President had a relationship with a young woman. His conduct was inappropriate. But it was not obstruction of justice. During the course of their relationship, the President and the young woman pledged not to talk about it with others. That is not obstruction of justice. The President ended their relationship before anyone knew about it. He ended it not because he thought it would place him in legal jeopardy; he ended it because he knew it was wrong. That is not obstruction of justice.

The President hoped that no one would find out about his indiscretion, about his lapse in judgment. That is not obstruction of justice, either. One day, however, long after he had ended the relationship, he was asked about it in an unrelated lawsuit, a lawsuit whose intent, at least as proclaimed by those who were pursuing it, was to politically damage him. That was their publicly announced goal. So he knew, the President knew that his secret would soon be exposed. And he was right.

It was revealed for public consumption, written large all over the world against his best efforts to have ended the relationship and to have put right what he had done wrong. That is the real big picture. That is the truth. And that is not obstruction of justice.

So let's talk about the allegation of obstruction of justice, about the box of gifts that Ms. Currie received from Ms. Lewinsky. I want to begin by telling you another true story, the real story of the now famous gifts.

It takes place on December 28, 1997. On that day the President gave Ms. Lewinsky holiday gifts. During her visit with the President, Ms. Lewinsky has said that she raised the subpoena that she had received from the Jones lawyers on the 19th and asked him, what should she do about the gifts. The President has said he told her, whenever it was that they discussed it, that she would have to give over whatever she had. He was not concerned about the gifts because he gives so many gifts to so many people. Unbe-

knownst to the President, however, Ms. Lewinsky had been worrying about what to do with the gifts ever since she got the subpoena. She was concerned that the Jones lawyers might even search her apartment so she wanted to get the gifts out of her home.

After Ms. Lewinsky's visit with the President, Ms. Currie walked her from the building. Then or later, either in person or on the phone, Ms. Lewinsky told Ms. Currie that she had a box of gifts that the President had given her that she wanted Ms. Currie to hold because people were asking questions. In the course of that conversation, they discussed other things as well. Ms. Currie agreed to hold the box of gifts. After their discussion, Ms. Lewinsky packed up some but not all of the gifts that the President had given her over time. She kept out presents of particular sentimental value as well as virtually all of the gifts he had given her that very day on the 28th.

Ms. Currie went by Ms. Lewinsky's home after leaving work, picked up the box that had a note on it that said, "Do not throw away," and she took it home. Ms. Currie did not raise Ms. Lewinsky's request with the President because she saw herself as doing a favor for a friend. Ms. Currie had no idea the gifts were under subpoena.

So Ms. Lewinsky's request hardly struck her as criminal.

This story that I just told you is obviously very different from the story presented by the House managers. How can I tell such a story that is so at odds with that which has been presented by the House managers? The answer lies in the selective reading of the record by the House managers. But theirs is not the only version of the facts that needs to be told. So what details did they downplay or discard or disregard in their presentation to create allegations of obstruction of justice?

To be fair, the House managers acknowledged up front that their case is largely circumstantial. They are right. Let's walk through the House managers' presentation of the key events which they gave to you last week. Let's look at exhibit 1 which is in the packet that has been handed out to you.

First key fact: On December 19, Monica Lewinsky was served with a subpoena in the Paula Jones case. The subpoena required that she testify at that deposition in January 1998 and also to produce each and every gift given to her by President Clinton.

Second event: On December 28, Ms. Lewinsky and the President met in the Oval Office to exchange Christmas gifts, at which time they discussed the fact that the lawyers in the Jones case had subpoenaed all of the President's gifts.

Third key fact: During the conversation on the 28th, Ms. Lewinsky asked the question whether she should put away outside her home or give to someone—maybe Betty—the gifts. At that time, according to Ms. Lewinsky, the President responded, "Let me think about it."

Fourth fact they presented to you: That answer led to action. Later that day, Ms. Lewinsky got a call at 3:32 p.m. from Ms. Currie who said, "I understand you have something to give me or that the President has said you have something for me." It was the

President who initiated the retrieval of the gifts and the concealment of the evidence.

Fifth event they presented: Without asking any questions, Ms. Currie picked up the box of gifts from Ms. Lewinsky, drove to her home, and placed the box under her bed.

That is what the House managers told you last week. Now, let's go through their story piece by piece. On December 19, Monica Lewinsky was served with a subpoena in the Jones case. The subpoena required her to testify at a deposition in January 1998, and also to produce each and every gift given to her by the President. This statement is factually accurate. It does not, however, convey the entire state of affairs. Ms. Lewinsky told the FBI that when she got the subpoena she wanted the gifts out of her apartment. Why? Because she suspected that lawyers for Jones would break into her apartment looking for gifts. She was also concerned that the Jones people might tap her phone. Therefore, she wanted to put the gifts out of reach of the Jones lawyers, out of harms way. The managers entirely disregarded Ms. Lewinsky's own independent motivations for wanting to move the gifts.

Let's continue. On December 28, 1997, Ms. Lewinsky and the President met in the Oval Office to exchange Christmas gifts, at which time they discussed the fact that the lawyers in the Jones case had subpoenaed all of the gifts from the President to Ms. Lewinsky. During conversation on December 28, Ms. Lewinsky asked the President whether she should put away the gifts out of her house some place, or give them to someone, maybe Betty. At that time, according to Ms. Lewinsky, the President said, "Let me think about it."

The House managers have consistently described the December 28 meeting exactly this way, as did the majority counsel for the House Judiciary, as did the Office of Independent Counsel. It has been said so often that it has become conventional wisdom. But it is not the whole truth. It is not the full record. Ms. Lewinsky actually gave 10 renditions of her conversation with the President. All of them have been outlined in our chart. Invariably, the one most cited is the one least favorable to the President. But even in that version, the one that is least favorable to the President, no one claims he ordered, suggested, or even hinted that anyone obstruct justice. At most, the President says, "Let me think about it." That is not obstruction of justice.

But what about the nine other versions? Some of the other versions which I have never heard offered by the House managers, versions that maybe you, too, have never heard, are the ones that put the lie to the obstruction of justice elevation.

Let's look at exhibit 2 which is in your material. You may have never heard, for example, this version of their conversation. This is Ms. Lewinsky speaking:

> It was December 28th and I was there to get my Christmas gifts from him . . . and we spent maybe about 5 minutes or so, not very long, talking about the case. And I said to him, "Well, do you think" . . . and I don't think I said get rid of, but I said, "Do you think I should put away or maybe give to Betty or give someone the gifts?" And he—I don't remember his response. It was something like, "I don't know," or "hmm" or there was really no response.

You also may not have heard this version. This is a juror speaking, a grand juror speaking to Ms. Lewinsky:

The JUROR: Now, did you bring up Betty's name or did the President bring up Betty's name?

And this is at the meeting on the 28th:

Ms. LEWINSKY: I think I brought it up. The President wouldn't have brought up Betty's name because he really didn't—he really didn't discuss it . . . .

And you probably have not heard this version:

Lewinsky advised that Clinton was sitting in a rocking chair in the study. Lewinsky asked Clinton what she should do with the gifts Clinton had given her and he either did not respond or responded "I don't know". Lewinsky is not sure exactly what was said, but she is certain that whatever Clinton said, she had no clear image in her mind of what to do next.

Why haven't we heard these versions? Because they weaken an already fragile circumstantial case. If Ms. Lewinsky says that the President doesn't respond at all, then there is absolutely no evidence for the House managers' obstruction of justice theory, even under their version of events. So these versions get disregarded to ensure that the House managers' big picture doesn't get cluttered by all those details. It is those facts, those stubborn facts, that just don't fit.

But the most significant detail the managers disregard because it doesn't fit is the President's testimony. The President testified that he told Ms. Lewinsky that she had to give the Jones lawyers whatever gifts she had. Why? As the House managers predicted we would ask, because it is a question that begs to be asked, why would the President give Ms. Lewinsky gifts if he wanted her to give them right back? The only real explanation is he truly was, as he testified, unconcerned about the gifts. The House managers want you to believe that this gift giving was a show of confidence; that he knew Ms. Lewinsky would conceal them. But then why, under their theory, ask Ms. Currie to go pick them up? Why not know that Ms. Lewinsky is just going to conceal them? Better still, why not just show her the gifts and tell her to come by after the subpoena date has passed?

It simply doesn't make sense. The President's actions entirely undermine the House managers' theory of obstruction of justice.

But let's continue with their version of events. That answer, the "Let-me-think-about-it" answer, that answer led to action. Later that day, Ms. Lewinsky got a call at 3:32 p.m. from Ms. Currie who said, "I understand you have something to give me or the President said you have something to give me." It was the President who initiated the retrieval of the gifts and the concealment of the evidence.

Here is where the House managers have dramatically shortchanged the truth because the whole truth demands that Ms. Currie's testimony be presented fairly.

In telling their story, the managers do concede that there is a conflict in the testimony between Ms. Lewinsky and Ms. Currie, but they strive mightily to get you to disregard Ms. Currie's testimony by telling you that her memory on the issue of how she came to pick up the gifts was "fuzzy"—fuzzy. In particular, Manager HUTCHINSON told you:

I will concede there is a conflict in the testimony on this point with Ms. Currie. Ms. Currie, in her grand jury testimony, had a fuzzy memory, a little different recollection. She testified that, the best she can remember, Ms. Lewinsky called her, but when she was asked further, she said that maybe Ms. Lewinsky's memory is better than hers on that issue.

That is what the House managers want you to believe about Ms. Currie. That is not playing fair by Ms. Currie. It is not playing fair by the facts. Why? Because Ms. Currie was asked about who initiated the gift pick-up five times. Her answer each time was unequivocal—5 times. From the first FBI interview just days after the story broke in the media, to her last grand jury appearance, Ms. Currie repeatedly and unwaveringly testified that it was Ms. Lewinsky who contacted her about the gifts.

Her memory on this issue is clear. What does she say? Let's look at exhibit 3, the first time she is asked:

Lewinsky called Currie and advised she had returned all gifts Clinton had given to Lewinsky, as there was talk going around about the gifts.

The second time:

Monica said she was getting concerned and she wanted to give me the stuff the President had given her, or give me a box of stuff. It was a box of stuff.

Third time, and this was a prosecutor asking Ms. Currie the question:

Just tell us for a moment how this issue first arose, and what you did about it, and what Ms. Lewinsky told you.

Ms. CURRIE: The best I remember, it first arose with conversation. I don't know if it was over the phone or in person; I don't know. She asked me if I would pick up a box. She said Isikoff had been inquiring about the gifts.

The fourth time:

The best I remember, she said she wanted me to hold these gifts—hold this—I'm sure she said gifts, a box of gifts—I don't remember—because people were asking questions, and I said fine.

The fifth time:

The best I remember is, Monica called me and asked me if she can give me some gifts, if I would pick up some gifts for her.

The last time, the fifth time, when a grand juror completely misstated Ms. Currie's testimony regarding how the gift exchange was initiated by suggesting that the President had directed her to pick up the gifts, Ms. Currie was quick to correct the juror:

Question. Ms. Currie, I want to come back for a second to the box of gifts and how they came to be in your possession. As I recall your earlier testimony the other day, you testified that the President asked you to telephone Ms. Lewinsky, is that correct?

Answer. Pardon? The President asked me to telephone Ms. Lewinsky?

JUROR. Is that correct?

Ms. CURRIE. About?

JUROR. About the box of gifts. I am trying to recall and understand exactly how the box of gifts came to be in your possession.

Ms. CURRIE. I don't recall the President asking me to call about a box of gifts.

JUROR. How did you come to be in possession of the box of gifts?

Ms. CURRIE. The best I remember, Ms. Lewinsky called me and asked me if she can give me the gifts—if I would pick up some gifts for her.

The record reflects that Ms. Currie's testimony on this issue was clear—five times—every time she was asked.

What, then, are the managers talking about when they say that Ms. Currie concedes that Ms. Lewinsky might have a better mem-

ory than herself on this issue? They are talking about something a little different; that was whether she, Ms. Currie, had told the President that she had picked up the box of gifts from Ms. Lewinsky. Let's put it in context. After being asked the same question for the fourth time and reiterating for the fourth time that Ms. Lewinsky contacted her about the gifts, the prosecutor asked Ms. Currie:

Well, what if Ms. Lewinsky said that Ms. Currie spoke to the President about receiving the gifts from Ms. Lewinsky?

Ms. Currie responds:

Then she may remember better than I. I don't remember.

Not once did Ms. Currie equivocate on the central fact Ms. Lewinsky asked her to retrieve the gifts. The President testified, consistent with Ms. Currie's testimony, that he never asked Ms. Currie to retrieve the gifts from Ms. Lewinsky. So why is Ms. Currie's testimony distorted and discounted by the House managers?

They are asking you to make one of the most awesome decisions the Constitution contemplates. They owe you, they owe the President, they owe the Constitution, and they owe Betty Currie an accurate presentation of the facts.

But what about that supposedly corroborating cell phone call from Betty Currie to Monica Lewinsky on December 28? The managers highlighted this call, which they claim is the call in which Ms. Currie told Ms. Lewinsky that she understood she had something for her, the gifts. This, they say, is the linchpin that closes the deal on their version of the facts.

What the managers downplay, as Mr. Ruff discussed yesterday, is the fact that this call to arrange the pickup of the gifts comes after the time Ms. Lewinsky repeatedly testified that the gifts were picked up by Ms. Currie. In citing the cell phone record as corroboration, they also disregard Ms. Currie's testimony that she picked up the gifts leaving from work on her way home; that would have been from Washington to Arlington. That is inconsistent with the call from Arlington.

Most significantly, the managers purposely avoided telling you about the length of the call. As Mr. Ruff pointed out yesterday, the call is for 1 minute, or less. According to Ms. Lewinsky's own testimony, when she spoke to Ms. Currie to arrange the gift pickup, they talked about other matters, as well as the box. They had a conversation. That is a lot of talk: I have a box. When can you come pick it up? Where do you want me to meet you? And other chitchat. That is a lot of talk for a call that lasts 1 minute, or less. It is all but inconceivable that all this took place in the call. Since Ms. Currie placed a call to Ms. Lewinsky, though, the House managers want you to believe that.

What next? The House managers told you, without asking any questions, Ms. Currie picked up the box of gifts from Ms. Lewinsky, drove to her home, which, incidentally, is inconsistent with their theory because she is going in the wrong direction. She is supposed to be going to the hospital—if she picked up the gifts, on their theory—and she placed the box under her bed. Then they posit this question: Why would Ms. Currie pick up the gifts from Ms. Lewinsky? Why on earth would she do such a thing? Their answer:

She must have been ordered to pick up the gifts by the President. They conclude, without any testimonial report, that there would be no reason for Betty Currie, out of the blue, to retrieve the gifts, unless instructed to do so by the President. Why else would she do it?

Well, the record before you offers the answer. As Ms. Currie told the FBI during her first interview in January of 1998, Ms. Lewinsky was a friend. She had been helpful and supportive when she was dealing with some very painful personal tragedies. Ms. Currie enjoyed what she saw as a motherly relationship with Ms. Lewinsky. They would often talk about each other's families, about their own activities, and other chitchat. Why does she agree to hold the box of gifts for Ms. Lewinsky? Because she is a friend. And that is not obstruction of justice.

Now, think about the story as I told it to you, and about the different story the managers presented. Ms. Lewinsky was concerned about the gifts after receiving a subpoena from the Jones lawyers. She was worried they might search her apartment and she wanted to get the gifts out of her home. She met with the President, and what does he do? He gives her more gifts—more gifts.

When she asked what to do about the gifts, at most she says, "Let me think about it." Those are the words that Lewinsky has acknowledged on several occasions, that he may have said nothing.

Ms. Lewinsky is still concerned about the gifts. She decides to put them away, keeping the gifts that have sentimental value, and giving to her lawyer the gifts she thinks the Jones lawyers are looking for, and giving to Ms. Currie those items that she really would like back but that she can live without. She tells Ms. Currie that she has some gifts from the President that she wants her to hold because there is talk going around about the gifts. Ms. Currie picks them up after work on her way home.

This story is consistent with the President's lack of concern about the gifts. The managers have tried to deflect the inexplicable contradiction created by their own theory. They want you to believe the President would really give Ms. Lewinsky gifts only to take them back on the very same day. Of course he wouldn't. No one would.

The only explanation they can conjure is torture: The President gave her gifts which he intended to take back that same afternoon to show his confidence that she would conceal the relationship. The facts clearly do not support their version of events. To believe the managers' version of events, you must not only disbelieve the President, you must also disbelieve Ms. Currie.

Ms. Currie has said that the President did not ask her to pick up the gifts. Ms. Currie has said that Ms. Lewinsky asked her to pick up the gifts. The managers have downplayed Ms. Currie's credibility in this incident. They have urged you to think of her as acting as "a loyal secretary to the President."

Of course she is loyal. But it is, may I say, an insult to Betty Currie and to millions of other loyal Americans to suggest that loyalty breeds dishonesty. If Ms. Currie was dishonest, why would she have told the counsel about the conversation between the President and her that the managers have recounted as being so damaging? Why would she have said anything at all about that conversation?

Why? Because she is honest. And loyalty and honesty are not mutually exclusive. Betty Currie is a loyal person, and Betty Currie is an honest person.

These are the facts. That is not obstruction of justice.

I believe I can best sum up by using the words of Manager BUYER who quoted President John Adams. "Facts are stubborn things. Whatever may be our issues, or inclinations, or the dictates of our passions, they cannot alter the state of the facts and the evidence."

Those stubborn facts. Manager BUYER went on to say, "I believe John Adams was right." Facts and evidence. Facts are stubborn things. You can color the facts, like calling Ms. Currie's memory fuzzy. You can shade the facts by not telling you the length of that supposed corroborating phone call. You can misrepresent the facts by giving only 1 of 10 versions of Ms. Lewinsky's testimony about the President's response to her question about the gifts. You can hide the facts, like not telling you of Ms. Lewinsky's personal motivation for wanting the gifts. But the truthful facts are stubborn; they won't go away. Like the telltale heart, they keep pounding. And they keep coming. They won't go away. Those stubborn, stubborn facts. They show that this was not obstruction of justice.

I now will talk about the President's conversation with Ms. Currie on January 18. It is not difficult to understand these events if you have lived a life in which you are the subject of extraordinary media attention and extraordinary media scrutiny. Most American lives are not like that. Our jobs and our personal lives are not usually the subject for daily media consumption. As Senators, you obviously know well what that life is like.

On January 18, the President talked to Ms. Currie about the Jones deposition and in particular about his surprise at some of the questions the Jones lawyers had asked about Ms. Lewinsky. In the course of their conversation, the President asked Ms. Currie a series of questions and made some statements about his relationship with Ms. Lewinsky, all of which seemed to seek her concurrence, or reaction, or her input.

The managers' theory is that the President, by his comments, corruptly tried to influence Ms. Currie's potential testimony in the Jones case in violation of the obstruction of justice law. They acknowledge that the President knew nothing about the independent counsel's investigation. So they have focused on the Jones case as the place to lodge their obstruction of justice allegation. Ms. Currie was not scheduled to be a witness in that case. And, as you will see, the President had other things on his mind.

Before I go into the facts surrounding these conversations, I want to first focus briefly on the law, as the managers did in their presentation. There are two relevant obstruction of justice statutes: 18 U.S.C. 1503, which is the general obstruction of justice statute; and 18 U.S.C. 1512, the more specific statute which prohibits witness tampering.

There are differences between these two statutes, but for our purpose their essential elements are similar. Both require the Government to prove that the person being accused, one, acted knowingly; two, with specific intent; three, to corruptly affect and influence, in 1503, and corruptly persuade, in 1512, either the due ad-

ministration of justice, under 1503, or the testimony of a person in an official proceeding, under 1512, to try to persuade the testimony of a person in an official proceeding. For conviction, each and every element must be proven beyond a reasonable doubt. If the prosecution fails to prove even one element, the jury is obliged to acquit. In this case, none of the elements is present.

First, a little more about the law. You have to do more than make false statements to someone who might or might not testify in a judicial proceeding to obstruct justice. In United States v. Aguilar, an opinion by Chief Justice Rehnquist and quoted by the House managers, the Supreme Court addressed the Government's requirement and showed that the defendant knew his actions were likely to affect a judicial proceeding. There, the U.S. district court judge was accused and convicted of lying to an FBI agent about a conversation with another judge and about what he said about his knowledge of some wiretapping. The Supreme Court reversed the conviction under 1502, the general obstruction of justice statute, holding that the facts were insufficient to make the case. They said in this material:

> We do not believe that uttering false statements to an investigative agent—and that seems to be all that was proved here—who might or might not testify before a grand jury is sufficient to make out a violation of the catch-all provision of 1503. . . . But what use will be made of false testimony given to an investigative agent who has not been subpoenaed or otherwise directed to appear before the grand jury is far more speculative. We think it cannot be said to have the "natural and probable effect" of interfering with the due administration of justice.

In responding to the defendant's criticism of the Court's holding, Mr. Chief Justice Rehnquist wrote, under the defense theory:

> A man could be found guilty of violating 1503 if he knew of a pending investigation and lied to his wife about his whereabouts at the time of the crime, thinking that an FBI agent might interview her and that she might in turn be influencing her statements to that agent about her husband's false accounts of where he was.

The intent to obstruct justice is indeed present, but the man's culpability is a good deal less clear from the statute than we would usually require in order to impose criminal liability.

So I want to begin by focusing on the "corruptly persuade" elements of witness tampering. What does it mean to corruptly persuade? The term is vague, and the legislative history on the specific point is not very clear. We do know it means more than harassing, which is described as badgering or pestering conduct, since 1512 makes intentional harassment a misdemeanor a lesser offense of "corruptly persuade," which is a felony. The U.S. Attorneys' Manual gives some guidance. A prosecution under 1512 would require the Government to prove beyond a reasonable doubt, one, an effort to threaten, force or intimidate another person and; two, an intent to influence the person's testimony. Thus, "corruptly persuade" for career prosecutors requires some element of threat or intimidation or pressure.

Keeping that overview in mind, let's look at the facts. On January 17, 1998, the President called Ms. Currie after his deposition and asked her to meet with him the following day. On January 18, the President and Ms. Currie met, and the President told her about some of those surprising questions he had been asked in his deposition about Ms. Lewinsky. In the course of their conversation, according to Ms. Currie, the President posed a series of questions and

made statements including: You were always there when she was there, right? We were never really alone. You could see and hear everything. Monica came on to me, and I never touched her, right? And she wanted to have sex with me, and I can't do that.

Our analysis of this issue could stop here. There is no case for obstruction of justice. Why? There is no evidence whatsoever of any kind of threat or intimidation. And as we discussed, the U.S. Attorneys' Manual indicates that without a threat or intimidation, there is no corrupt influence. Without corrupt influence, there is no obstruction of justice. But the evidence reveals much more. Not only does the record lack any evidence of threat or intimidation, the record specifically contains Ms. Currie's undisputed testimony which exonerates the President of this charge. This is Ms. Currie's testimony and is the fourth exhibit in the materials.

Question to Ms. Currie:

Now, back again to the four statements that you testified the President made to you that were presented as statements, did you feel you were pressured when he told you those statements?

None whatsoever.

Question: What did you think, or what was going through your mind about what he was doing?

Ms. Currie:

At the time I felt that he was—I want to use the word shocked or surprised that this was an issue, and he was just talking.

Question: That was your impression, that he wanted you to say—because he would end each of the statements with "Right?," with a question.

Ms. Currie:

I do not remember that he wanted me to say "Right." He would say, "Right?" and I could have said, "Wrong."

Question: But he would end each of these questions with a "Right?" and you could either say whether it was true or not true.

Correct.

Did you feel any pressure to agree with your boss?

None.

The evidence on this issue is clear. There was no effort to intimidate or pressure Ms. Currie, and she testified that she did not feel pressured. Betty Currie's testimony unequivocally establishes that the managers' case lacks any element of threat or intimidation. There is no evidence, direct or circumstantial, that refutes this testimony. This is not obstruction of justice.

But let's not stop there. Let's look at the intent element of the obstruction of justice laws—in other words, whether the President had the intent to influence Ms. Currie's supposed testimony, or potential testimony.

In an attempt to satisfy this element of the law, the managers overreached in their presentation to create the appearance that the President had the necessary specific intent. They argue that, based upon the way he answered the questions in the Jones deposition, he purposely referred to Ms. Currie in the hopes that the Jones lawyers would call her as a corroborating witness. Therefore, according to their theory, he had the specific intent.

The facts belie their overreaching. The House managers suggested to you that the President increased the likelihood that Ms. Currie would be called as a witness by challenging the plaintiff's attorney to question Ms. Currie. A review of the transcript, how-

ever, shows that the President's few references to Ms. Currie were neither forced nor needlessly interposed. They were natural, appropriate; they were responsive. Indeed, the only occasion when he suggested the Jones lawyers speak to Ms. Currie is when they asked if it was typical for Ms. Currie to be in the White House after midnight. He understandably said, "You have to ask her." Hardly a challenge. It is a reasonable response to an inquiry about someone else's activities.

The managers' conjecture about the President's state of mind, however, fails on an even more basic level. If you believe the managers' theory, if you believe that the President went to great lengths to hide his relationship with Ms. Lewinsky, then why on Earth would he want Ms. Currie to be a witness in the Jones case? If there was one person who knew the extent of his contact with Ms. Lewinsky, it was Ms. Currie. While she did not know the nature of his relationship with Ms. Lewinsky, Ms. Currie did know and would have testified to Ms. Lewinsky's visits in 1997, the notes and messages that Ms. Lewinsky sent the President, the gifts that Ms. Lewinsky sent the President, and the President's support of the efforts to get Ms. Lewinsky a job. With just that information, it would have only been a matter of time before the Jones lawyers discovered the relationship—not that they needed Ms. Currie's testimony; they didn't need it for any of this. Ms. Tripp was already on the December 5, 1997, witness list, and she was already scheduled for a deposition.

So why would the President want her to testify? The answer is simple. He didn't. The President was not thinking about Ms. Currie becoming a witness in the Jones case. Indeed, she is the last person the President would have wanted the Jones lawyers to question. And even if the Jones lawyers had wanted to question Ms. Currie, it is highly unlikely they would have been allowed to do so, given the posture of the case at that time.

Judge Wright ordered the parties in August of 1997 to exchange names and addresses of all witnesses no later than December 5, 1997. Ms. Currie was not on their final witness list. Moreover, the cutoff date for all discovery was January 30. By the time the President's deposition was over, it was really too late to call Ms. Currie as a witness.

Finally, you need to remember that in the context of the Jones case Ms. Currie was, at best, a peripheral witness on a collateral matter that the court ultimately determined was not essential to the core issues in the case. She had only knowledge of a small aspect of a much larger case—all the more reason not to view her as a potential witness.

The President was not thinking about Ms. Currie becoming a witness in the Jones case. So what was the President thinking? The President explained to the grand jury why he spoke to Ms. Currie after the deposition. It had nothing to do with Ms. Currie being a potential witness. That was not his concern. The President was concerned that his secret was going to be exposed and the media would relentlessly inquire until the entire story and every shameful detail was public. The President's concern was heightened by an Internet report that morning that he spoke to Betty which alluded to Ms. Lewinsky and to Ms. Currie and to issues

that the Jones lawyers had raised. The President was understandably concerned about media inquiries, a concern everyone who lives and serves in the public eye likely can understand.

In trying to prepare for what he saw as the inevitable media attention, he talked to Ms. Currie to see what her perceptions were and what she recalled. He talked to her to see what she knew.

Remember, some of the questions that the Jones lawyer asked the President were so off base. For example, they asked him about visits from Ms. Lewinsky between midnight and 6 a.m. where Ms. Currie supposedly cleared her in. The President wanted to know whether or not Ms. Currie agreed with this perception or whether she had a different view, whether she agreed that Ms. Lewinsky was cleared in when he was present or had there been other occasions that he didn't know about. He also wanted to assess Ms. Currie's perception of the relationship. He knew the first person who would be questioned about media accounts, particularly given that she was in the Internet report, was going to be Ms. Currie.

The House managers did the President a disservice in suggesting in the end that his five pages of testimony about why he spoke to Ms. Currie ultimately amounts to a four-word sound bite to refresh his recollection. He obviously said a lot more.

Why did they say that? Because they needed to establish intent, and the testimony and the facts do not show intent. That is the truth. That is all of the facts.

The President's intent was never to obstruct justice in the Jones case. It was to manage a looming media firestorm, which he correctly foresaw. As the President told the grand jury, "I was trying to get the facts and trying to think of the best defense we could construct in the face of what I thought was going to be a media onslaught."

He was thinking about the media. That is the big picture. That is not obstruction of justice.

In the end, of course, you must make your own judgments about whether the managers have made a case for convicting the President of obstructing justice on either of these allegations. We believe they have not, because the facts, those stubborn facts, don't support the allegations. Neither does the rule of law. We are not alone in that conclusion.

We want to share with you some of the remarks from a bipartisan panel of prosecutors who spoke to the House Judiciary panel, some of which you saw earlier with Mr. Craig. I have taken a very brief clip of their testimony that dealt with allegations of obstruction of justice against the President for, as you will see, then Representative and now Senator SCHUMER focused in on one of the two allegations that I address today.

[Text of videotape presentation:]

Mr. SULLIVAN. Mrs. Currie testified that she did not feel that the president came and asked her some questions in a leading fashion—"Was this right? Is this right? Is this right?"—after his deposition was taken in the Jones case. And she testified that she did not feel pressured to agree with him and that she believed his statements were correct——

Rep. SCHUMER. Correct, right.

Mr. SULLIVAN [continuing]. And agreed with him. He—the quote is, "He would say, 'Right,' and I could have said, 'Wrong,'" Now that is not a case for obstruction of justice. It is very common for lawyers, before the witness gets on the stand, to say, "Now you're going to say this, you're going to say this, you're going to say this."

Rep. SCHUMER. Right.

Mr. SULLIVAN. Now it doesn't make a difference if you've got two participants to an event and you try to nail it down, so to say.

Rep. SCHUMER. Do all of you agree with that, with the Currie—the Currie——

Mr. WELD. Yeah.

Rep. SCHUMER. And on the other two, the Lewinsky parts of this, is there——

Mr. DAVIS. I think to some——

Rep. SCHUMER. I mean, I don't even understand how they could—how Starr could think that he would have a case, not with the president of the United States, but with anybody here, when it seems so natural and so obvious that there would be an overriding desire not to have this public and to have everybody—have the two of them coordinate their stories—that is, the president and Miss Lewinsky—if there were not the faintest scintilla of any legal proceeding coming about. It just strikes me as an overwhelming stretch. Am I wrong to characterize it that way? You gentlemen all have greater experience than I do.

Mr. DAVIS. I think you're right. And also, the problem a prosecutor would face would be that in these cases, there is relationship between these people unrelated to the existence of the Paula Jones case—the relationship. And that's the motivation——

Rep. SCHUMER. Correct.

And Mr. Weld, do you disagree with—do you agree with that?

Rep. SENSENBRENNER. The gentleman's time—the gentleman's time——

Rep. SCHUMER. Could I just ask Mr. Weld for a yes or no——

Rep. SENSENBRENNER. I'm sorry, Mr. Schumer. Mr. Schumer——

Rep. SCHUMER [continuing]. For a yes or no answer to that?

Can you answer that yes or no, Governor?

Mr. WELD. I think it's a little thin, Mr. Congressman.

Rep. SCHUMER. Thank you.

Mr. NOBLE. Again, it's a specific-intent crime, and the question is, what was the President thinking when he said this? We can look at his words and try and analyze his words. But Ms. Currie says that she didn't believe he was trying to influence her and that if she'd said something different from him, if she believed something different from him, she would have felt free to say it. So for that reason, I believe, you just don't have the specific intent necessary to prove obstruction of justice with regard to the comment that you just asked me.

Manager HUTCHINSON is keeping very good company. He, like the other prosecutors, does not believe the record before you establishes obstruction of justice. We agree.

Before I close, I do want to take a moment to address a theme that the House managers sounded throughout their presentation last week—civil rights. They suggested that by not removing the President from office, the entire house of civil rights might well fall. While acknowledging that the President is a good advocate for civil rights, they suggested that they had grave concerns because of the President's conduct in the Paula Jones case.

Some managers suggested that we all should be concerned should the Senate fail to convict the President, because it would send a message that our civil rights laws and our sexual harassment laws are unimportant.

I can't let their comments go unchallenged. I speak as but one woman, but I know I speak for others as well. I know I speak for the President.

Bill Clinton's grandfather owned a store. His store catered primarily to African Americans. Apparently, his grandfather was one of only four white people in town who would do business with African Americans. He taught his grandson that the African Americans who came into his store were good people and they worked hard and they deserved a better deal in life.

The President has taken his grandfather's teachings to heart, and he has worked every day to give all of us a better deal, an equal deal.

I am not worried about the future of civil rights. I am not worried because Ms. Jones had her day in court and Judge Wright determined that all of the matters we are discussing here today were not material to her case and ultimately decided that Ms. Jones, based on the facts and the law in that case, did not have a case against the President.

I am not worried, because we have had imperfect leaders in the past and will have imperfect leaders in the future, but their imperfections did not roll back, nor did they stop, the march for civil rights and equal opportunity for all of our citizens.

Thomas Jefferson, Frederick Douglass, Abraham Lincoln, John F. Kennedy, Martin Luther King, Jr.—we revere these men. We should. But they were not perfect men. They made human errors, but they struggled to do humanity good. I am not worried about civil rights because this President's record on civil rights, on women's rights, on all of our rights is unimpeachable.

Ladies and gentlemen of the Senate, you have an enormous decision to make. And in truth, there is little more I can do to lighten that burden. But I can do this: I can assure you that your decision to follow the facts and the law and the Constitution and acquit this President will not shake the foundation of the house of civil rights. The house of civil rights is strong because its foundation is strong.

And with all due respect, the foundation of the house of civil rights was never at the core of the Jones case. It was never at the heart of the Jones case. The foundation of the house of civil rights is in the voices of all the great civil rights leaders and the soul of every person who heard them. It is in the hands of every person who folded a leaflet for change. And it is in the courage of every person who changed. It is here in the Senate where men and women of courage and conviction stood for progress, where Senators—some of them still in this chamber; some of them who lost their careers—looked to the Constitution, listened to their conscience, and then did the right thing.

The foundation of the house of civil rights is in all of us who gathered up our will to raise it up and keep on building. I stand here before you today because others before me decided to take a stand, or as one of my law professors so eloquently says, "because someone claimed my opportunities for me, by fighting for my right to have the education I have, by fighting for my right to seek the employment I choose, by fighting for my right to be a lawyer," by sitting in and carrying signs and walking on long marches, riding freedom rides and putting their bodies on the line for civil rights.

I stand here before you today because America decided that the way things were was not how they were going to be. We, the people, decided that we all deserved a better deal. I stand here before you today because President Bill Clinton believed I could stand here for him.

Your decision whether to remove President Clinton from office, based on the articles of impeachment, I know, will be based on the law and the facts and the Constitution. It would be wrong to convict him on this record. You should acquit him on this record. And you must not let imagined harms to the house of civil rights persuade you otherwise. The President did not obstruct justice. The

President did not commit perjury. The President must not be removed from office.

The CHIEF JUSTICE. The Chair recognizes the majority leader.

LEADER'S LECTURE SERIES

Mr. LOTT. Once again, I invite all Senators to attend the Leader's Lecture Series this evening at 6 p.m. in the Old Senate Chamber. I have already announced former President George Bush will be the speaker.

ADJOURNMENT UNTIL 1 P.M. TOMORROW

Mr. LOTT. Mr. Chief Justice, I ask unanimous consent that the Senate now stand in adjournment under the previous order.

There being no objection, the Senate, at 5:14 p.m. sitting as a Court of Impeachment, adjourned until Thursday, January 21, 1999, at 1 p.m.

THURSDAY, JANUARY 21, 1999

[From the Congressional Record]

The Senate met at 1:01 p.m. and was called to order by the Chief Justice of the United States.

TRIAL OF WILLIAM JEFFERSON CLINTON, PRESIDENT OF THE UNITED STATES

The CHIEF JUSTICE. The Senate will convene as a Court of Impeachment. The Chaplain will offer a prayer.

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Dear God, You know what we need before we ask You but, in the asking, our minds and hearts are prepared to receive Your answer. In this impeachment trial, we have learned again that really listening over a prolonged period of time is hard work. Often it is difficult to hear what is being said because of differing convictions. Dissonance causes discordant static. Sometimes our preconceptions about what we think will be said keep us from hearing what actually is said. Thank You for the commitment of the men and women of this Senate to serve You and our Nation by accepting the demanding responsibility of listening for and evaluating truth. Grant them renewed energy, sensitive audio nerves, and discerning minds. For Your glory and the good of America. Amen.

The CHIEF JUSTICE. The Sergeant at Arms will make the proclamation.

The Sergeant at Arms, James W. Ziglar, made proclamation as follows:

Hear ye! Hear ye! Hear ye! All persons are commanded to keep silent, on pain of imprisonment, while the Senate of the United States is sitting for the trial of the

articles of impeachment exhibited by the House of Representatives against William Jefferson Clinton, President of the United States.

The CHIEF JUSTICE. The Chair recognizes the majority leader.

Mr. LOTT. Thank you, Mr. Chief Justice.

ORDER OF PROCEDURE

Mr. LOTT. Today, we will conclude the presentation of the White House counsel. I understand that the presentation will last approximately 4½ hours. As we have done previously, we will take periodic breaks throughout the proceedings, with the first one coming in approximately 1 hour and 15 minutes. I believe that will be approximately midway in the presentation of Mr. Counsel Kendall. Then we would probably take at least one more break so that the Senators and Chief Justice would have a chance to stretch and so we will have some logical break in the presentations. As a reminder, we will convene tomorrow at 1 p.m. to resume consideration of the articles.

At this point, I ask the indulgence of the Chief Justice and all Senators as we take up some routine matters before we resume consideration of the articles. These have been precleared.

UNANIMOUS-CONSENT AGREEMENT

Mr. LOTT. I ask unanimous consent, notwithstanding the consideration of the articles, that it be in order at this time to conduct several routine legislative matters.

The CHIEF JUSTICE. Without objection, it is so ordered.

MEASURES READ FOR THE FIRST TIME—S. 269, 270, AND 271

Mr. LOTT. Mr. Chief Justice, there are three bills at the desk. I ask unanimous consent the bills be considered read the first time. I further ask consent the bills be read a second time en bloc, and I object to my own request.

The CHIEF JUSTICE. Without objection, it is so ordered.

Mr. LOTT. The bills will be read a second time on the next legislative date, as I understand it.

The CHIEF JUSTICE. The leader is correct.

The bills read the first time are as follows:

S. 269, a bill to state the policy of the United States regarding the deployment of a missile defense system capable of defending the territory of the United States against limited ballistic missile attack;

S. 270, a bill to improve pay and retirement equity for members of the Armed Forces; and for other purposes;

S. 271, a bill to provide for education flexibility partnerships.

AMENDING PARAGRAPH 1(m)(1) OF RULE XXV

Mr. LOTT. I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 28 which changes the words "Handicapped individuals" to "Individuals with disabilities" in Rule XXV.

I further ask consent the resolution be agreed to and the motion to reconsider be laid upon the table.

The CHIEF JUSTICE. Is there objection?

Without objection, it is so ordered.

The resolution (S. Res. 28) was agreed to, as follows:

S. RES. 28

Resolved, That paragraph 1(m)(1) of Rule XXV is amended as follows:

Strike "Committee on Labor and Human Resources" and insert in lieu thereof "Committee on Health, Education, Labor, and Pensions".

Strike "Handicapped individuals" and insert in lieu thereof "Individuals with disabilities".

TRIAL OF WILLIAM JEFFERSON CLINTON, PRESIDENT OF THE UNITED STATES

Mr. LOTT. I believe we are prepared for the concluding presentation by the White House counsel.

I yield the floor, Mr. Chief Justice.

THE JOURNAL

The CHIEF JUSTICE. If there is no objection, the Journal of proceedings of the trial is approved to date. Under the provisions of Senate Resolution 16, the counsel for the President have 18 hours and 9 minutes remaining to make their presentation of their case.

The Chair now recognizes Mr. Counsel Kendall.

Mr. Counsel KENDALL. Mr. Chief Justice, Members of the Senate, managers from the House of Representatives, good afternoon. I am David Kendall of the law firm of Williams & Connolly. Since 1993 it has been my privilege to represent the President in the tortuous and meandering Whitewater investigation which, approximately a year ago, was transformed in a remarkable way into the Lewinsky investigation.

I want to address this afternoon certain allegations of obstruction of justice contained in article II of the articles of impeachment. Mr. Manager SENSENBRENNER remarked that no prior article allegation of obstruction of justice has ever reached this Chamber. So this is a case of first impression.

Deputy Counsel Cheryl Mills yesterday addressed the parts of article II pertaining to gifts and the President's conversations with Ms. Currie. I will cover, this afternoon, the remaining five subparts of article II. The evidence plainly shows that the President did not obstruct justice in any way and there is nothing in this article which would warrant his removal from office.

As I begin, I want to thank you for your open minds, for your attention, for your withholding judgment until you have heard all of our evidentiary presentation. There are a lot of myths about what the evidence is in this case. Some of them are misunderstandings based upon erroneous media reports, some spring from confusion in the evidence itself, and some are the result of concerted partisan distortion.

I want to talk to you this afternoon about what the record is and what the evidence actually shows. I apologize to you in advance if the process is tedious. What I think I have to request from you is your common sense and some uncommon patience. But the evidence—those stubborn facts—is critically important to inform your

ultimate vote on these articles. I will do my best to avoid repetition and lawyer talk—although I am a lawyer.

In our trial memorandum, we gave you the citations to the evidence I am going to be referencing, so you can check the facts there. I want to say that I welcome your scrutiny.

My presentation this morning consists of six parts. I would like, if I could, to give you those as milestones. I want to make some remarks generally about evidence, and then I want to consider the specific evidence which is relevant to each of the five subparts I am going to be talking about. I am going to do them out of numerical order but what I hope is in a logical order. I am going to cover article 1 first, then article 2, then article 5, article 7, and article 4. Ms. Mills, yesterday, has already covered 3 and 6.

First of all, a few words about evidence. We have heard a great deal about the rule of law in the various presentations of the House managers. But what is at issue here—and I think Mr. Manager GRAHAM made this point very well—it is a solemn obligation, which is constitutionally committed to this body. Your decision, whatever it is, is not going to have some kind of domino effect that ineluctably leads to that midnight knock at the door. The rule of law is more than rhetoric. It means that in proceedings like these, where important rights are being adjudicated, that evidence matters, fairness matters, rules of procedural regularity matter, the presumption of innocence matters, and proportionality matters. The rule of law is not the monopoly of the House managers, and it ought to be practiced in these proceedings, as well as talked about in speeches.

We have heard a lot of pejorative rhetoric about legal hairsplitting that the President and his legal team have engaged in. As a member of that legal team, I paid attention to that rhetoric. But as I sat there listening to the various presentations, they struck me as somewhat odd, because one of the hallmarks of the rule of law is careful procedures and explicit laws which try to define rights for every citizen.

It is not legal hairsplitting to raise available defenses, or to point out gaps in the evidence, or to make legal arguments based upon precedent, however technical and politically unpopular some of those arguments may be. And I think it is particularly important in a proceeding like this where the charge is an accusation of a crime. Mr. Manager MCCOLLUM was quite explicit in his argument that the first thing you have to determine here is whether the President committed any crimes.

I am going to try to focus on the facts and the evidence concerning obstruction of justice. I don't think there is a need for me to go into the law; we have set forth the relevant legal principles in our trial memorandum. Mr. Ruff and Ms. Mills very ably covered some of the governing principles, and Ms. Mills played some videotape excerpts of experts, and the law on obstruction of justice is relatively settled. Indeed, our primary disagreement with the very able House managers concerns the evidence and what it shows.

Now, in December the Judiciary Committee of the House of Representatives reported four articles of impeachment to the floor. Two of those—one alleging perjury in the President's January 17, 1998, deposition in the Paula Jones case, and one alleging abuse of

power—were specifically considered by the House and just as specifically rejected, although the House managers had very cleverly attempted to weave into their discussion of the two articles that were adopted some of the rejected allegations.

Now, on the chart, article II alleges that the President has, in some way, impeded or covered up the existence of evidence relevant to the Paula Jones case. That is the whole focus of this article. It focuses on the alleged impact on the Paula Jones case. It is important because when we get to subpart (7), we will see that there is no way the allegations there could be a part of this article or impact the Paula Jones case.

The President supposedly accomplished this obstruction of justice through—and here I quote—"one or more of the following acts . . ."

Here, I think I should observe that this "one or more" menu, as it were, is plainly defective in a constitutional sense because, as we have pointed out in our answer and in our trial memorandum, and as Mr. Ruff has made clear in his presentation, such a format makes it impossible to assure that the constitutionally required two-thirds of Senators voting concur on any particular ground that is alleged. Since the Senate rules provide that you can't split up this menu—you have to cover all seven allegations together—it would be possible for the President to be convicted without that requisite two-thirds majority, because you might get 9 or 10 votes in favor of the article based on each of the 7 different grounds.

The Constitution, of course, gives the House of Representatives the sole power of impeachment and has exercised that power to adopt article II. However, several of the allegations about what the President did to obstruct justice, supposedly in the House managers' presentation, are nowhere contained in these seven subparts; they are simply not there.

For example, you heard repeatedly about the President's use in his deposition of the term "alone"—was he ever alone with Ms. Lewinsky. The managers claim that that somehow obstructed justice. The allegation that this consisted of an impeachable offense, however, was rejected when the House of Representatives voted down one of the four articles alleging deposition perjury.

You have also heard reference to the President's allegedly false and misleading answers to the 81 interrogatories sent to the President in November by the House Judiciary Committee. Again, an article based upon those interrogatory answers was voted down in the House of Representatives.

I would like you to bear in mind an image which Mr. Manager HUTCHINSON and Counsel Ruff share in some way. You will see that they didn't share it entirely. Mr. Manager HUTCHINSON referred to the "seven pillars of obstruction." Mr. White House Counsel Ruff referred to the seven "shifting sand castles of speculation." It won't surprise you that I agree with Mr. Ruff's characterization. But the important point is that there are 7 grounds in this article; there are not 8, there are not 19, there are 7 charges. That is what the House enacted and that is what we are going to address and rebut.

Before considering the five subparts of article II that I am going to be addressing, I would like to say a few words about the different kinds of evidence you are going to have to consider. There

is, first, direct evidence. Now, this isn't the most probative kind of evidence, because it is the least ambiguous. It comes directly from the five senses of the witness. For example, when the witness testifies about something the witness did, that is direct evidence.

From the House managers' very skillful presentation, you would not be aware of the large amount of direct evidence which is in the record which refutes and contradicts the allegations of obstruction of justice. I am going to cover that in detail this afternoon.

The second kind of evidence is what the law calls circumstantial, and this describes any evidence which is probative only if a certain conclusion or inference is drawn from the evidence. Circumstantial evidence is admissible, but, by its definition, it is to some degree ambiguous because it is not direct. Its probative power—or its value—depends upon the strength of the inference you can logically draw from it.

Let me give you an example. You walk out of your house in the morning and you see the sidewalk is completely wet. You might conclude that it has rained the night before and you might be reasonably confident in that conclusion. However, were your sharp eyes to focus further and observe your neighbor's sprinkler sitting right by the sidewalk, dripping from the sprinkler head, you might want to revise your conclusion.

Circumstantial evidence is often subject to several different interpretations, and for this reason it has to be viewed very carefully. As one court has stated, "Circumstantial evidence presents a danger that the trier of fact may leave logical gaps in the proof offered and draw unwarranted conclusions based on probabilities of low degree."

If a criminal charge is to be based on conclusions drawn from circumstantial evidence rather than on direct evidence, those conclusions have to be virtually unavoidable. Most of the obstruction case presented—and they have recognized this, and Mr. Manager HUTCHINSON recognized it on Saturday—is based on circumstantial evidence, and that evidence is, at best, profoundly ambiguous. They told you that they have painted a picture with circumstantial evidence. I think what they have in fact done is given you a Rorschach test.

I would like to now turn to the five subparts of article I which I intend to cover. And I want to describe, as to each, the relevant direct evidence in the record, the circumstantial evidence, and the portions of the managers' presentation which do not in fact constitute either kind of evidence but in fact represent speculation, theorizing, and hypothesis. What I believe you will find is that the direct evidence disproves the charges of obstruction and the managers have had to rely on contradictory and unpersuasive circumstantial evidence to try to make their case.

Subpart (1) of article II alleges that the President encouraged Ms. Lewinsky to execute an affidavit in the Paula Jones case "that he knew to be perjurious, false and misleading." The House managers allege that during a December 17 telephone conversation Ms. Lewinsky asked the President what she could do if she were subpoenaed in the Jones case and the President responded, "Well, maybe you could sign an affidavit." And that is a statement the President does not dispute making.

It is hard to believe, but this statement of the President to Ms. Lewinsky, advising her of the possibility of totally lawful conduct, is the House managers' entire factual basis for supporting the first allegation in subpart (1). The managers don't claim that the President advised her to file a false affidavit. That is not what subpart (1) alleges. And there is no evidence in the record anywhere to support such an allegation. Nor do the managers allege he even told her, advised her, urged her, or suggested to her what to put in her affidavit. The charge which the managers have spun out of this single statement by the President is refuted by the direct evidence.

First of all, Ms. Lewinsky has repeatedly and forcefully denied any and all suggestion that the President ever asked her to lie. In her proffer—and a proffer, of course, is an offer made to a prosecutor to try to get immunity—she made in her own handwriting on February 1, 1998, she stated explicitly that, "Neither the President nor anyone on his behalf asked or encouraged Ms. Lewinsky to lie."

In an FBI interview conducted on July 27, she made two similar statements. And you see them up here on the chart: "Neither the President or Jordan ever told Lewinsky that she had to lie."

"Neither the President nor anyone ever directed Lewinsky to say anything or to lie."

And it was the FBI agent who transcribed those two comments.

I would like to focus upon the fact that she told the FBI the President never directed her "to say anything or to lie."

I think that is particularly telling as the direct evidence in the context of this allegation that the President supposedly urged her to file an affidavit that he knew would be false.

Finally, in Ms. Lewinsky's August 20 grand jury testimony, she stated—and she had to volunteer to do it—"No one ever asked me to lie and I was never promised a job for my silence."

"No one ever asked me to lie and I was never promised a job for my silence."

Is there something difficult to understand here?

It is interesting to see how the House managers try to establish that somehow the President asked Ms. Lewinsky to file a false affidavit. But their argument essentially begs the question. They argue that the President in fact somehow encouraged her to lie because both parties knew the affidavit would have to be false and misleading to accomplish the desired result.

But again there is no evidence to support this conjecture, and in fact the opposite is true. Both Ms. Lewinsky and the President have testified repeatedly that, given the particular claims being made in the Jones case, they both honestly believe that a truthful, albeit limited, affidavit might—"might"—establish that Ms. Lewinsky had nothing relevant to offer in the way of testimony in the Jones case.

The President explained in his grand jury testimony on at least five occasions in response to the prosecutor's question that he believed Ms. Lewinsky could execute a truthful but limited affidavit that would have established there was no basis for calling her as a witness to testify in the Jones case.

For example, the President told the grand jury:

But I'm just telling you that it's certainly true what she says here, that we didn't have—there was no employment, no benefit in exchange, there was nothing having to do with sexual harassment. And if she defined sexual relationship in the way I think most Americans do . . . then she told the truth.

Or again, the President told the grand jury:

I've already told you that I felt strongly that she could issue, that she could execute an affidavit that would be factually truthful, that might get her out of having to testify. . . . And did I hope she'd be able to get out of testifying on an affidavit? Absolutely. Did I want her to execute a false affidavit? No, I did not.

It is important to bear in mind that the Paula Jones case was a sexual harassment case, although it turned out to be legally groundless, and it involved allegations of nonconsensual sexual solicitations. Ms. Lewinsky's relationship to the President had been consensual. She knew nothing whatsoever about the allegations in the Jones case. There is no evidence in the record that she had ever been in Arkansas in her life. And in any event, the Jones case arose out of factual allegations dating from May of 1991 when the President was Governor of Arkansas, long before Ms. Lewinsky had even met the President.

Now, it is not simply the President who believed that in the circumstances here Ms. Lewinsky could have filed an affidavit which could have been truthful and which might have gotten her released from testifying in a Jones case deposition. Ms. Lewinsky also has testified that she might have been able to file a truthful affidavit which would have accomplished that purpose. For example, she told the FBI in an interview after she obtained immunity on July 29 that she had told Linda Tripp that the purpose of an affidavit was to avoid being deposed, and that she thought one could do this by giving only a portion of the whole story so the Jones lawyers would not think the person giving the affidavit added anything of relevance to their case.

Again, in the same interview with the FBI, Ms. Lewinsky stated that the goal of such an affidavit was to be as benign as possible so as to avoid being deposed.

Again, in her grand jury testimony on August 6, Ms. Lewinsky testified that:

I thought that signing an affidavit could range from anywhere—the point of it would be to deter or to prevent me from being deposed and so that there could range from anywhere between maybe just somehow somehow mentioning, you know, innocuous things.

It is not disputed that the President showed no interest in viewing a draft of Ms. Lewinsky's affidavit, did not review it, and, according to Ms. Lewinsky, said he did not need to see it. This fact is obviously exculpatory. If the President were truly concerned about what was going into Ms. Lewinsky's affidavit, surely he would have wanted to review it prior to his summation.

Now, to counter this inference, the House managers offer speculation. Mr. Manager MCCOLLUM tried to downplay the significance of this fact by asking you to engage in sheer surmise. He said on Friday:

I doubt seriously [the President] was talking about 15 other affidavits of somebody else and didn't like looking at affidavits anymore. I suspect and I would suggest to you that he was talking about 15 other drafts of this proposed affidavit since it had been around the Horn a lot of rounds.

Well, as the able House manager himself stated, this suggestion is mere suspicion, speculation; it flies in the face of Ms. Lewinsky's direct testimony. There is evidence of only a few drafts, and there is no evidence that the President ever saw any draft.

Now, Ms. Lewinsky was under no obligation to volunteer to the Paula Jones lawyers every last detail about her relationship with the President, and the fact that the President did not advise her or instruct her to do so is neither wrong nor an obstruction of justice. The fact is that the limited truthful affidavit might have established that Ms. Lewinsky's testimony was simply not relevant to the Jones case.

The President knew and had told Ms. Lewinsky that a great many other women he knew who had been subpoenaed by the Paula Jones lawyers had tried to avoid the burden, the expense, and the humiliation of a deposition by filing an affidavit in support of a motion to quash the deposition subpoena and by arguing in the affidavit that the subpoenaed woman had no relevant evidence for the Jones case. The Jones lawyers were casting a very wide net for evidence that they could use to embarrass the President. The discovery cutoff in the case was fast approaching—that is the point at which you can't take any more discovery—and there was some chance both Ms. Lewinsky and the President felt that she could escape deposition through an accurate but limited affidavit.

Moreover, there is significant evidence in the record that at the time she executed her affidavit, Ms. Lewinsky honestly could believe, honestly believed that she could deny a sexual relationship given what she believed to be the definition of that term. In an audiotape conversation which Linda Tripp, secretly recorded, Ms. Lewinsky declared:

> I never even came close to sleeping with the President. We didn't have sex.

Again, I would remind you of Mr. Craig's presentation yesterday concerning Ms. Lewinsky's understanding of the term "sexual relations," which was the same as the President's.

There is another part of the chronology here—and a circumstantial evidence case often rests heavily on chronology—that the House managers simply ignore in their attempt to fit some of the facts into a sinister pattern. Ms. Lewinsky's name appeared on the Paula Jones witness list which, the managers tell us accurately, the President's lawyers reviewed with him on Saturday, December 6. She was one of a great many people named on the witness list.

Now, if the President's concern was so intense about the appearance of her name on the list, would he have waited until December 17 to talk to her? There is no explanation for this delay, which is consistent with intense concern on the President's part, except that her appearance with a lot of others was not particularly troubling to him. The main reason for his phone call on December 17 to Ms. Lewinsky, the unrebutted evidence shows, is that he wanted to tell Ms. Lewinsky that Betty Currie's brother had died. Indeed, 3 days after that telephone call, Ms. Lewinsky attended the funeral of Ms. Currie's brother on December 20.

Now, insofar as you want to draw inferences from the chronology of events in December, this long delay is circumstantial evidence that the President felt no particular urgency either to alert Ms.

Lewinsky that her name was on the witness list or make any suggestions to her about an affidavit. Remember her repeated testimony, which is direct evidence: No one ever asked her to lie.

Now, subpart (2) of article II alleges that the President obstructed justice by encouraging Ms. Lewinsky, in that same late night telephone call—two of these articles rest on that same telephone call—to give perjurious, false and misleading testimony if and when she was called to testify personally in the Jones litigation.

Now, it was interesting to me that a couple of days ago the House managers released a response to our presentation, and they concede here that the President and Ms. Lewinsky did not discuss the deposition that evening of December 17 because Monica—they call her Monica—had not been subpoenaed.

Well, that is true. There was no deposition subpoena received by Ms. Lewinsky until 2 days later. Now, the lawyers in the room know something about what witness lists are and what they contain that the civilian part of the world may not know. As lawyers get ready to go to trial, and the judge requires them to put their witnesses on the witness list, you put every witness you can think of who might conceivably be relevant—from Mr. Aardvark to Ms. Zanzibar. All of them go on the witness list. And that is what had happened here. It wasn't until you get something like a subpoena for a deposition that you know a witness is really going to be a significant player in the trial.

Well, let's look at the allegations here. And remember, these allegations focus on December 17, 2 days before Ms. Lewinsky is going to receive her subpoena. I think you logically begin with the direct evidence, and the direct evidence is the testimony of the two people involved in the telephone conversation, Ms. Lewinsky and the President. Ms. Lewinsky has repeatedly stated that no one ever urged her to lie and that this plainly applies to this December 17 conversation. She said, in her handwritten proffer that I had on the chart earlier, that the President did not ask her or encourage her to lie. She made that statement when talking to the independent counsel, when her fate was in the hands of the independent counsel, when her immunity agreement could be broken and she could be prosecuted. She has, nevertheless, continued to maintain that nobody asked her ever to lie. She said in the July 27 FBI interview neither the President nor Mr. Jordan ever told her she had to lie, and she said that in her grand jury testimony.

It is interesting to hear all the ways that the House managers—and they are very skillful—try to minimize the importance of this direct evidence. You would think Ms. Lewinsky's statements under oath were irrelevant to this case. She gave this testimony, for the most part, when she was subject to prosecution for perjury. It simply cannot be blandly dismissed because it was given under this threat. Indeed, Mr. Manager HUTCHINSON—and I would like to quote him—shares this same belief with me. He told you, standing right here, "that Ms. Lewinsky's testimony is credible and she has the motive to tell the truth because of her immunity agreement with the independent counsel, where she gets in trouble only if she lies."

Likewise, the President has consistently insisted he never asked Ms. Lewinsky to lie. In his grand jury testimony last August, he said that he and Ms. Lewinsky "might have talked about what to do in a non-legal context at some point in the past," if anybody inquired about their relationship, although he had no specific memory of such a conversation. And he testified that they did not talk about this in connection with Ms. Lewinsky's testimony in the Jones case.

He was asked by one of the prosecutors:

> In that conversation, [on December 17] or in any conversation in which you informed her she was on the witness list, did you tell her, you know, you can always say that you were coming to see Betty or bringing me letters? Did you tell her anything like that?
>
> [The President:] I don't remember. She was coming to see Betty. I can tell you this. I absolutely never asked her to lie.

There is, thus, no direct testimony from anybody that on December 17 the President asked Ms. Lewinsky to lie if called to testify in the Jones case. Here the House managers don't really even rely on circumstantial evidence to refute the direct testimony of the two relevant witnesses. They rely, instead, on what they assert is logic. They claim that while the President maybe didn't specifically tell her to lie, he somehow suggested that she give a false account of their relationship. What you should infer, according to them, is based upon what they may have said about their relations at other times, previous times to this late night December 17 phone call, the President somehow suggested that she say the same thing at her deposition, something like, "You know, you can always say you were coming to see Betty, or that you were bringing me letters."

Their claim boils down, however, to the inferences to be drawn from the uncontested fact that in the past, before this time, before this December 17 phone call, the President and Ms. Lewinsky had discussions about what she should say if asked about the visits to the Oval Office.

Both have acknowledged that. Not surprisingly, at the time these conversations occurred they were both concerned to conceal their improper relationship from others while it was going on. Cover stories are an almost inevitable part of every improper relationship between two human beings. By its very nature, the relationship is one that has to be concealed; and, therefore, misleading cover stories inevitably accompanied that relationship.

Now, to say that is not to excuse it or to exonerate it or justify it; but, rather, to emphasize that the testimony about "visiting Betty" or "bringing me letters" is in the record, but it is not linked in any way to the December 17 phone call or to any testimony or affidavit with regard to the Jones case. Here again, I want to go to the direct evidence that is relevant on count 2, because it undercuts the managers' suggestion that this discussion of the cover stories actually occurred in the context of discussion about the Paula Jones case.

Now, here on a chart we have a blowup of part of Ms. Lewinsky's handwritten proffer to the independent counsel on February 1, which makes it clear that she does recall having a discussion with the President in which he said that if anyone questioned her about visiting him, she should say she was either bringing him letters or

visiting Betty Currie. But Ms. Lewinsky states, "there is truth to both of these statements." It was a cover story but there was some truth in it.

She also went out of her way in this proffer to emphasize that, while she did not recall precisely when the discussions about cover stories occurred, they occurred "prior to the subpoena in the Paula Jones case." That is what you see in her paragraph 11. Her paragraph 11 refers back to paragraph 2. And her point is that, while she and the President did have these discussions, it was not in the context of her testimony.

In paragraph 4 also, as you see from the chart or from your handout, as to the contents of any possible testimony, Ms. Lewinsky wrote that to the best of her recollection she did not believe she discussed the content of any deposition during the December 17 conversation with the President.

Now, in an FBI interview on July 31, after she had received immunity from the independent counsel, the FBI agent noted what Ms. Lewinsky had told him:

> Lewinsky advised, though they did not discuss the issue in specific relation[ship] to the Jones matter, she and Clinton had discussed what to say when asked about Lewinsky's visits to the White House.

This is direct evidence. Nobody denies that there was discussion of cover stories early in the relationship, but there is no evidence that it occurred in connection in any way with the Jones case.

Again, despite Ms. Lewinsky's direct and unrefuted testimony about the December 17 telephone call, the House managers asked you to conclude that the President must have asked her to testify falsely, because she had, by her own account, on prior occasions, assured the President that she would deny the relationship.

Think for a moment about that: They ask you to accept their speculation, in the face of contradictory evidence from both parties, and use that as a basis on which to remove the President. Again, Ms. Lewinsky never stated that she told the President anything about denying their relationship on December 17, or at any other time, after she had been identified as a witness. Indeed, she testified in the grand jury that that discussion did not take place after she learned she was a witness in the Jones case. And, again, we have her grand jury testimony displayed on the chart. A grand juror is asking a question.

Question:

> Is it possible that you also had these discussions [about cover stories denying the relationship] after you learned that you were a witness in the Paula Jones case?
> [Ms. Lewinsky]: I don't believe so.

A juror—and these jurors were very good at questioning witnesses throughout this proceeding:

> Can you exclude that possibility?
> [Ms. Lewinsky]: I pretty much can. I really don't remember it.

Direct testimony given when Ms. Lewinsky was covered by an immunity agreement that can only be divested by her perjuring herself.

There is another thing that I think is relevant here, and that is that Ms. Lewinsky has stated several times that while these were

cover stories, they were not untrue. In her handwritten proffer, as you have seen, she stated that she asked the President what to say if anyone asked her about her visits. He said you could mention Betty Currie or bringing me letters. And she added there was truth to both of these statements and that "[n]either of those statements [was] untrue." Indeed, she testified to the grand jury that she did, in fact, bring papers to the President and that on some occasions, she visited the Oval Office only to see Ms. Currie.

Question by a grand juror:

> Did you actually bring the President papers at all?
> Yes.
> All right. Tell us a little bit about that.
> It varied. Sometimes it was just actually copies of letters . . .

Again, in her August 6, 1998, grand jury appearance, Ms. Lewinsky testified:

> I saw Betty every time that I was there . . . most of the time my purpose was to see the President, but there were some times when I did just go see Betty but the President wasn't in the office.

Ms. Lewinsky and Ms. Currie were friends, and they did have a separate social relationship.

The managers assert that these stories were misleading, and the House committee report on the articles of impeachment declared that these stories about Ms. Currie and delivering papers was a "ruse that had no legitimate business purpose." In other words, while the so-called stories were literally true, the explanations might have been misleading. But the literal truth here, while it may appear legalistic and hairsplitting, is, in fact, a defense to both the perjury and the obstruction of justice charges under the rule of law. While the President and Ms. Lewinsky had discussed cover stories while their improper relationship was in progress, there is simply no evidence that they discussed this at any time when Ms. Lewinsky was a witness in the Jones case.

The next subpart I want to consider is subpart (5). Subpart (5) alleges that at the deposition, the President allowed his attorney to make false and misleading statements to a Federal judge characterizing an affidavit in order to prevent questioning deemed relevant by the judge.

It alleges obstruction solely because the President did not say anything when his attorney, Mr. Bennett, cited Ms. Lewinsky's affidavit in an unsuccessful argument to Judge Wright that evidence concerning Ms. Lewinsky should not be admitted at that point because it was irrelevant to the Jones case. At one point, Mr. Bennett, the President's lawyer, states that, according to the affidavit, "there is no sex of any kind in any manner, shape or form."

This claim, which also is presented in the perjury section, as Mr. Craig pointed out, is deficient as an allegation of obstruction, both as a matter of fact and as a matter of law.

But I will say one thing. The direct evidence on this point is uniquely available because there is only one witness who can testify about what was in his thoughts at a given moment, and the President has testified at great length in his grand jury testimony about what he was thinking at this point.

The President told the grand jury that he was simply not focusing closely on the exchange between the lawyers, but was instead concentrating on his own testimony.

He said:

> I'm not even sure I paid much attention to what he [Mr. Bennett] was saying. I was thinking. I was ready to get on with my testimony here and they were having these constant discussions all through the deposition.

And again the President testifies:

> I didn't pay any attention to this colloquy that went on. I was waiting for my instructions as a witness to go forward. I was worried about my own testimony.

I think Mr. Craig provided you with a background yesterday that I won't repeat here, but I would refer you to about what was on the President's mind at the time.

Mr. Manager MCCOLLUM made a very polished and articulate presentation to you, and he predicted that the President's lawyers were going to argue that the President sat in silence because he wasn't paying attention. We have, indeed, argued this, and it is the truth based upon what the President has testified he was thinking about. But Mr. MCCOLLUM went on to argue that there was circumstantial evidence available from the videotape of the President at this deposition.

He stated:

> We've already seen the video. And you know that he was looking so intently. Remember, he was intensely following the conversation with his eyes. I don't know how anybody can say this man wasn't paying attention. He certainly wasn't thinking about anything else. That was very obvious from looking at the video.

We all saw the video during the House managers' presentations, and we saw a lot of the President at the deposition yesterday when Mr. Craig played the first part of it. If you observe the President throughout the time you have seen him on the video in the deposition, you will conclude that the look on his face was no different from what it was during other discussions or arguments of counsel about evidentiary or procedural matters. The videotape does not, fairly considered, indicate that the President was, in fact, focusing on the lengthy colloquy among the lawyers or that he knowingly made a decision not to correct his own lawyer.

The President has received a great deal of criticism, because at one point in his grand jury testimony, when asked about Mr. Bennett's statement, the President responds to the prosecutor that whether Mr. Bennett's statement is true depends on what the meaning of the word "is" is. That is, "there is no sex of any kind."

That has gotten its share of laughs. But when you read the President's grand jury transcript in context, this was a serious matter, and it is apparent that the President was not in any way describing what was in his own mind at the time of the deposition, but he rather was discussing Mr. Bennett's statement from the vantage point of the President's later grand jury testimony. He is interpreting what his own lawyer was saying. Mr. Craig pointed this out yesterday.

That interpretation is not perjury in article I, and it is not obstruction of justice in article II. What the exchange was was that

the President, in response to one of the prosecutors, explains why, on one reading Mr. Bennett's statement, it may not be false.

Now, it may be hairsplitting and it may be professorial and it may be technical, but the important thing is it is a retrospective assessment. The President is not talking about himself. He is talking about how to construe Mr. Bennett's statement. And what he says is, there is a way in which Mr. Bennett's statement at the deposition is accurate; that is, if Mr. Bennett was referring to the relationship between the President and Ms. Lewinsky on that date, it was an accurate statement because the improper relationship was over a long time earlier.

Now, the relevant point here is that the President's disquisition on the word "is" and its meaning was not an attempt to explain his own thinking at the time of the deposition, but was rather his later interpretation of what Mr. Bennett had said at the deposition.

In light of the President's direct unequivocal testimony, this speculation about what was in his mind is simply baseless, and there is, in fact, no evidence to support the charge leveled in subpart (5) of article II.

There is another reason to reject the charge; and that is, that the law imposes no obligation on the client to monitor his or her lawyer's every statement and representation. Particularly in a civil deposition, in which the client is being questioned, clients are routinely advised to focus on the questions posed, think carefully about the answer, answer only the question asked and ignore distractions. And sometimes, sad to say, the statements of one's own lawyer can be a distraction. And those of you who are lawyers and have defended people in depositions know that that is the advice you give the client.

There was good reason for the President to be thinking about his own testimony and leave the legal fencing to the lawyers, because whatever else may be said about him, there can be no doubt that the Jones case itself was a vehicle for partisan attack on the President and that he was going to be facing a series of hostile and difficult questions at the deposition.

Now, Judge Wright ultimately ruled that, giving Ms. Jones every benefit of the doubt, she had failed both legally and factually to present allegations that merited going to trial. But while it was legally meritless, while it was going on, the case did impose a significant toll on the President both personally and politically.

And let's be clear about one other thing while we are looking at this deposition and while you review the significance of the President listening in silence to Mr. Bennett's conduct. As Mr. Craig described yesterday, Judge Wright, in fact, interrupted Mr. Bennett in mid sentence as he was describing Ms. Jones' affidavit. She didn't allow him to complete his objection in which he cited the Lewinsky affidavit. She quickly interjected—and this is sometimes what judges do to the most learned of lawyers—she quickly interjected and said, "No, just a moment, let me make my ruling." And then she proceeded to allow the very line of questioning that Mr. Bennett was trying to prevent. So the President's silence, whatever motivated it, had absolutely no impact on the conduct of the Jones deposition.

And also let's be clear about one other thing: Nothing about this interchange between Mr. Bennett and Judge Wright blocked the ability of the Jones lawyers to obtain information about the President's relationship with Ms. Lewinsky because the Jones lawyers had been briefed the night before in great detail by Ms. Linda Tripp. Ms. Tripp had already gotten her own immunity agreement from the Office of Independent Counsel and had set up a lunch with Ms. Lewinsky at the Ritz-Carlton Hotel the day before the deposition, Friday, January 16. And at that lunch, of course, Ms. Lewinsky was apprehended by the Office of Independent Counsel and held for the next 12 hours. In the meantime, however, Ms. Tripp goes back to her home where she meets with the Jones lawyers that Friday night before the deposition and loads them up with all the information she has obtained from her illegal, secret audiotaping of Ms. Lewinsky. That is why they were able to ask the questions they did with such specificity and conviction.

Indeed, there is one point in the examination of the President where he says to the Jones lawyer who is examining him, Mr. Fisher—he asked the question. And Fisher says, "Sir, I think this will come"—he asked a question about "Can you tell me why you are asking these specific questions?" and Fisher replies, "Sir, I think this will come to light shortly, and you'll understand."

Well, how ironic that I am making a presentation today on January 21 because it did come to light—just as Mr. Fisher knew it would; just as Ms. Tripp knew it would—it came to light 1 year ago exactly when the story broke in the Washington Post. This fleeting exchange between Mr. Bennett and Judge Wright before she overruled his objection could not and didn't have any impact on the Jones lawyers' conduct.

Now, I want to look briefly at one other part of subpart (5) because it continues to make one other allegation: Such false and misleading statements at the deposition by Mr. Bennett allegedly were subsequently acknowledged by Mr. Bennett in a communication with the judge.

Now, if you look at Mr. Bennett's letter, however, that is not at all what the letter says. Mr. Bennett wrote to the judge on September 30 of last year. This is after the referral had come to Congress and after the House of Representatives had seen fit to release Ms. Lewinsky's grand jury testimony. Mr. Bennett does not, as the article alleges, acknowledge that he himself made false and misleading statements or that the President, either by his word or silence, made such statements. What Mr. Bennett does do in this letter, as you can see, is call the court's attention to the fact that Ms. Lewinsky herself had testified before a Federal grand jury in August. And—contrary to her earlier statements—she stated that portions of her affidavit were, according to her, false and misleading. Mr. Bennett's letter, bringing this to the judge's attention, was a matter of professional obligation and responsibility. It in no way is evidence supporting subpart (5).

Take a break?

The CHIEF JUSTICE. The Chair recognizes the majority leader.

RECESS

Mr. LOTT. Mr. Chief Justice, Mr. Kendall, indicating that he is about halfway through his presentation——

Mr. Counsel KENDALL. That is correct, sir.

Mr. LOTT. I would, then, ask unanimous consent we have a temporary recess for 15 minutes.

There being no objection, at 2:09 p.m., the Senate recessed until 2:30 p.m.; whereupon, the Senate reassembled when called to order by the Chief Justice.

Mr. CHIEF JUSTICE. The Chair recognizes the majority leader.

Mr. LOTT. Mr. Chief Justice, I believe the Senate is ready to proceed now with the presentation by Counsel Kendall.

The CHIEF JUSTICE. The Chair recognizes Counsel Kendall.

Mr. Counsel KENDALL. Thank you, Mr. Chief Justice.

Subpart (7)—we have two more subparts to go. I will take them out of order. Subpart (7) of article II alleges that the President obstructed justice when he relayed or told certain White House officials things about his relationship with Ms. Lewinsky that were false and misleading. This is another example of double billing in the two articles. This charge is leveled in article I, and it appears here in article II. Yesterday, Mr. Craig explained why these statements didn't constitute perjury, and I would like to take just a few minutes this afternoon to explain why they don't constitute an obstruction of justice, either.

First of all, and most obviously, there is no way—I said this in the beginning—there is no way that the statements of the aides could be in any way part of a scheme to deny Ms. Jones evidence. I think on this ground alone subpart (7) fails, because if you look at what is alleged in article II, it is that the President obstructed justice in order to delay, impede, et cetera, existence of testimony related to Ms. Jones' lawsuit. There is no way here that whatever the President said to an aide could have done that.

The statements, which this subpart (7) addresses, were statements that the President made very shortly after the Lewinsky publicity had broken to Mr. Bowles, Mr. Podesta, Mr. Blumenthal and Mr. Ickes, none of whom were witnesses in the Paula Jones case. They were on none of the witness lists, and they had no evidence at all relevant to the Paula Jones case since they had been working for the President. They weren't working for the President when he was Governor of Arkansas in May of 1991, and they weren't individuals subject to discovery. So these four aides just had no evidence whatsoever that they could contribute to the Paula Jones case.

But there is another more fundamental reason why this article is flawed as a matter both of the evidence and the law. The President has admitted misleading his family, his staff, and the Nation about his conduct with Ms. Lewinsky. And he has expressed profound regret for that conduct. Subpart (7), however, alleges that he should be impeached and removed from office simply because he failed to be candid with these particular four White House aides and misled them about the nature of his relationship with Ms. Lewinsky.

These allegedly impeachable denials to the four aides occurred, as I said, right after the publicity broke. And one of them occurred on January 21, last year, and then also on the 23rd and the 26th. This was at the very time the President denied he had had sexual relations with Ms. Lewinsky in nearly identical terms on national television to whoever throughout the United States happened to be watching at that time.

Having made this denial to the entire country, it simply is absurd to regard it any differently when made to four aides in the White House directly and person-to-person rather than through the medium of television. The President talked to these individuals about the Lewinsky matter because of his personal relationship and his direct professional exposure to them on a daily basis. He spoke to them, however, misleadingly in an attempt to allay their concern once the allegations about Ms. Lewinsky become public.

No discovery here—never yet found a place in which discovery would benefit the case for either side—but no discovery here is going to illuminate the record in any way. These four witnesses have testified before the independent counsel's grand jury on several occasions.

I think it is important to observe also that there is no way this interchange between the President and his aides could have affected evidence because his statements to them were hearsay which they would have reported accurately to the grand jury when asked. And by "hearsay," all they can testify to is what the President told them, and they could do that accurately. But their own testimony, based on whatever knowledge or observation or direct sensory evidence they might have, was not affected in any way by the President's statement. None of these aides had any independent knowledge of the relationship between the President and Ms. Lewinsky and, therefore, the only evidence they do offer would be a hearsay repetition of what the President had told them. And that was the same public denial that he had told everyone, including, presumably, any member of the grand jury who had his or her television set on on that Monday, January 26.

But under the strained theory—you really have to focus on this—under this theory, any citizen of the United States who heard that denial could form the basis for an allegation of impeachable conduct and removal of the President from office.

I think this subpart (7) of article II fails for a number of reasons not related to the Paula Jones case, and it violates common sense.

Let me turn to subpart (4). This subpart alleges that the President obstructed justice when he intensified and succeeded in an effort to secure job assistance for Ms. Lewinsky in order to corruptly prevent her truthful testimony. The claim here is of a quid pro quo, a "this for that." His job assistance was allegedly in order to prevent her truthful testimony.

I want to note a couple of things here. First of all, this word "intensified" is a pretty slippery word. It doesn't say "originated" or "began." It says "intensified." And that allegation implicitly tries to avoid the thrust of its own logic. It recognizes that the job search Ms. Lewinsky was conducting had begun long before there was any connection to the Paula Jones case. And the undisputed facts are going to reveal that Vernon Jordan and others were trying to help

her long before she appeared on the list of witnesses Ms. Jones was considering calling.

The second thing I want to emphasize is the quid pro quo nature of the allegation. Quid pro quo is a good Latin term meaning "this for that." "In order to" is the allegation of subpart (4). The job assistance was "in order to" prevent Ms. Lewinsky's truthful testimony.

Well, I want to review the evidence a bit because there is not only no evidence in the record; there is a lot of contradictory evidence, both direct and circumstantial. We have heard a great deal in the various presentations about Mr. Jordan's assistance to Ms. Lewinsky. But I was surprised to sit right over there through 11 hours 52 minutes, by my watch, of the House managers' very able presentation, and I heard almost nothing about what actually happened in New York City as a result of Mr. Jordan's efforts. But when we review the evidence—and it is all right here. Don't worry, I am not going to review every page of it. But it is all here. When we review this evidence which is available—all you have to do is read it—we get a very different picture from what we got from the able House managers. There is no secret about it, nor is there any conflict in the testimony of these witnesses. There is no need for further discovery here, as I will show, because the testimony is consistent.

Now, the proof that is in the record is that there was no corrupt linkage, no assistance whatsoever which was designed and focused to get Ms. Lewinsky to do anything—nothing which tied the job assistance to what was going on in the Jones case. Mr. Jordan did help open doors, and Ms. Lewinsky went through those doors, and she either succeeded or failed on her own merits. Two of the companies declined to offer her a job, and at the third she did get an entry-level job, which she received on her own merits.

There was no fix, no quid pro quo, no link to the Jones case. And also there was no urgency to Mr. Jordan's assistance to her. He started assisting her well before she showed up on the Jones witness list, and he helped her whenever he could, consistent with his own heavy travel schedule. There is the allegation of a quid pro quo, but there is nothing in the evidence to support the "pro" part of it.

What the House managers have tried to do—and they are skillful prosecutors, they are able, they are experienced, they are polished, and they know what they are doing—they have tried to juxtapose unrelated events and, by a selective chronology, tried to establish causation between two wholly unrelated sets of events. And there an old logical fallacy—you have had enough Latin today—that just because something comes after something, it was caused by the preceding event. It is like the rooster crowing and taking credit for the sun coming up. When you look at the House managers' case, there is a lot of that going on, because we will see there is no real existence of causal connection and we will also see that a lot of the chronology you have been given is erroneous.

As I said earlier, there is no evidence, either direct or circumstantial, to support this quid pro quo allegation.

Now, let's start with the direct evidence, the most logical place to begin. It could not be more unequivocal. Let's start with Ms.

Lewinsky. First of all, her New York job search began on her own initiative long before any involvement in the Jones case. Moving to New York was her own idea, and it was one she raised in July of 1997. This geographical move did not affect in any way her exposure to a subpoena in the Paula Jones case.

Under the Federal Rules of Civil Procedure, of course, a witness can be subpoenaed in any Federal district, no matter where the case is pending. And, indeed, a great many of the depositions in the Paula Jones case took place outside the State of Arkansas. For this reason, Mr. Manager BARR's assertion that the President wanted Ms. Lewinsky to go to New York because it would "make her much more difficult, if not impossible, to reach as a witness in the Jones case" is entirely untenable; she was just as vulnerable to subpoena in New York as she was in Washington. And, indeed, she was already under subpoena in January when she was finalizing her move. This contention just does not withstand scrutiny.

Now, Ms. Lewinsky testified:

> I was never promised a job for my silence.

You can't get any plainer than that. She testified that her job search had no relation to anything that she might do in the Jones case. In her July 27 interview with the FBI, the FBI agent recorded her statement that there was no agreement with the President, with Mr. Jordan, or anyone else that she had to sign a Jones affidavit before getting a job in New York. She told the FBI agent explicitly that she had never demanded from Mr. Jordan a job in exchange for a favorable affidavit and neither the President nor Mr. Jordan nor anyone else had ever made this proposition to her.

Now, Mr. Jordan, who is an eloquent and exceedingly articulate man, took care of that claim in his own grand jury testimony. He was asked about any connection between the job search and the affidavit. He said there was absolutely none. He said, on March 5, as far as he was concerned these were two entirely separate matters. And in his grand jury appearance on May 5 he was asked whether the two were connected, and Mr. Jordan said, "Unequivocally, indubitably, no."

The President has likewise testified that there was no connection between the Jones case and Ms. Lewinsky's job search. He told the grand jury:

> I was not trying to buy her silence or get Vernon Jordan to buy her silence. I thought she was a good person. She had not been involved with me for a long time in any improper way, several months, and I wanted to help her get on with her life. It is just as simple as that.

Quid pro quo? No. The uncontested facts bear out these categorical denials of the three most involved people. Ms. Lewinsky began looking for a job in July of 1997, and the event which hardened her resolve to move to New York was a report by her ostensible good friend, Ms. Linda Tripp, on or about October 6 that one of Ms. Tripp's friends at the National Security Council said that Ms. Lewinsky would never ever get a job in the White House again.

Now, it turns out that this disclosure, like so much else Ms. Tripp said, is false. Ms. Tripp's NSC friend said no such thing. But it did have a profound impact on Ms. Lewinsky, who described it as the straw that broke the camel's back. It was plain to her then

that she was never going to be able to get another White House job.

Mr. Jordan's assistance of Ms. Lewinsky began about a month before Ms. Lewinsky learned—about 6 weeks before she learned she was a possible witness in the Jones case. Ms. Lewinsky testified that she had discussed with Linda Tripp sometime in late September or early October the idea of asking for Mr. Jordan's assistance, and Ms. Lewinsky indicated she could not recall if it were her idea or Linda Tripp's idea, but in any event Mr. Jordan became involved sometime later at the direction not of the President but of Ms. Currie, who was a long-time friend of Mr. Jordan and who had discussed with Ms. Lewinsky her job search. Now, Ms. Currie had previously assisted Ms. Lewinsky in making contact with Ambassador Bill Richardson at the U.N. Ms. Lewinsky's first meeting was with Mr. Jordan on November 5, and Ms. Lewinsky testified that the meeting lasted about 20 minutes and that they had discussed a list of possible employers she was interested in. She never told Mr. Jordan that there was any time constraint on his assistance, and both she and Mr. Jordan traveled a great deal out of the country and in the country in that November-December period.

Now, Mr. Jordan testified unequivocally that he never, at any time, felt any particular pressure to get Ms. Lewinsky a job. This is plain and powerful and unrebutted testimony. He was asked in the grand jury if you recall any "kind of a heightened sense of urgency by Ms. Currie or anyone at the White House" about helping Ms. Lewinsky during the first half of December?

And he replied, "Oh, no, I do not recall any heightened sense of urgency. What I do recall is that I dealt with it as I had time to do it."

Now, let me just pause here and observe that if there had been any improper motive or any sinister effort to silence Ms. Lewinsky, it would have been extremely easy for the President to have arranged for her to be hired at the White House. If there were some corrupt intent to silence her, that was an obvious solution because she very much wanted to go back to work at the White House. It mattered to her a great deal. But, while she was interviewed a couple of times by White House officials in the summer of 1997, those interviews never resulted in a job offer. The fix was not in. There was no corrupt effort to bring Ms. Lewinsky back, give her a White House job or, indeed, transfer her in any way from her Pentagon job.

Now, she continued her job search efforts with the assistance of some of the White House people. In late October or early November, she told her boss at the Pentagon, Mr. Kenneth Bacon, that she wanted to leave and move to New York City. She enlisted his assistance in trying to help her get a private sector job, and he helped her because she had done good work for him. He had a positive impression and testified that he wanted to do whatever he could for her.

In November of 1997, her supervisor at the Pentagon indicated that Ms. Lewinsky gave notice of an intention to quit her Pentagon job at the year end.

Now, before we get to the private sector firms that Ms. Lewinsky went to, I want to pause and make the point that she had a United

Nations delegation job in her back pocket. Back pocket is a male image—perhaps in her purse. She had it in her hand and available, all during this period.

In early October, at the request of Ms. Currie, Mr. Podesta—John Podesta, who was then the White House Deputy Chief of Staff—had asked Ambassador Bill Richardson to consider Ms. Lewinsky for a position at the U.N. The Ambassador testified that he did not take this as a "pressure call." He said "there was no pressure anywhere by anybody" to hire Ms. Lewinsky.

Ms. Currie testified to the grand jury, without contradiction, that she was acting on her own, as Ms. Lewinsky's friend, in trying to help her.

Now, Ms. Lewinsky interviewed for the U.N. position on October 31 with Ambassador Richardson. And he, through his staff, offered her a job on November 3. Ambassador Richardson testified to the grand jury that he never spoke to the President or Mr. Jordan about Ms. Lewinsky, that he was impressed by her, that he made the offer on the merits, and that no one had pressured him to hire her.

He testified specifically to the grand jury on April 30:

> This was my decision to hire her. I did not do it under any pressure or anything. I felt that she would be suitable for the job, and I didn't feel I had to report to anybody. It's not in my nature. I don't take pressure well on personnel matters. I'm a Cabinet member. I don't have to account for anything. This was mine, my choice, my decision. And I stand behind it.

He also declared:

> What I did was routine.

This fact was highly significant, because although this job was not precisely the job Ms. Lewinsky wanted, it was a job in New York, and she kept this open until January 5 when she finally turned it down. Now, it was Mr. Manager BRYANT who referred to this in passing—just kind of walked around it. He disparaged it in the way a good trial lawyer does—recognize it is there, but then move around and away from it. But it is an important fact and it tears a very large hole in their circumstantial evidence case. Because she had in her hand, I will say, this job offer all through this period of November and December and into January. It wasn't precisely what she wanted but it was a good job. It was in New York City. And there was no urgent necessity for her, connected with her private sector job search. Once again, quid pro quo? No.

Now, there is a lot of further direct evidence concerning her job search. And this is contained in a great many interviews in grand jury transcript from the people at the various New York firms Mr. Jordan contacted on Ms. Lewinsky's behalf. Again, there is simply no direct evidence whatsoever from any of these people of any kind of quid pro quo treatment. While Mr. Jordan made the contacts on her behalf, there was no urgency about them. There was no pressure, and they were wholly unrelated to the Jones case.

Let's recognize the obvious here. The President's relation, improper relation with Ms. Lewinsky, had been over for many months. He continued to see her from time to time. He did what he could to be of assistance to her as she sought employment in

New York because, as he testified, she was a good person, and he was trying to help her get on with her life.

Mr. Jordan was able to open some doors, but once open, there was no inappropriate pressure. He really opened three doors for her: at American Express, at Young & Rubicam, and at Revlon. And she batted one for three. And actually in job searches, as in baseball, I, at least, will take that batting average any day of the week. But she succeeded on her own once she was through the door. And her getting through the door had no relation to the Paula Jones case.

Let's, first of all, take a look at what happened with American Express and see whether in direct or circumstantial evidence there is any evidence of a quid pro quo here. The independent counsel conducted a very large number of interviews and also summoned a great many witnesses from each of these three sets of companies. Mr. Jordan was a member of the American Express board of directors, and he telephoned a Ms. Ursula Fairbairn, the executive vice president of human resources at American Express on December 10 or 11. And he told Ms. Fairbairn that he wanted to send her the resume of a talented young woman in Washington, to see whether she matched up to any openings at American Express.

Ms. Fairbairn told the FBI that it was not at all unusual for American Express board members or other company officers to recommend young people for employment. Ms. Fairbairn said Mr. Jordan did not, in fact, mention any White House connection that the applicant had, and he exerted no pressure at all on her to hire the applicant. Ms. Fairbairn recalled that Mr. Jordan made another employment recommendation about 2 months earlier and indicated this was simply not an unusual request.

Now, the Office of Independent Counsel also—you see it on the chart—interviewed Thomas Schick at American Express. He is the executive vice president for corporate affairs and communications.

Ms. Fairbairn had sent the name and resume to Mr. Schick because she thought that is where Ms. Lewinsky might fit in, and he interviewed Ms. Lewinsky on December 23 in Washington. He decided after this interview not to hire Ms. Lewinsky because he felt she was lacking in experience and he also thought that American Express was probably not the right kind of company for her, given what she had told him she was interested in at the interview, and that she probably would be better off going to a public relations firm.

The decision not to hire, he told the FBI, was entirely his own. He felt no pressure to either hire or not hire Ms. Lewinsky and never talked to Mr. Jordan at any time during this process. Once again, quid pro quo? No.

The second company—actually two companies. It is Young & Rubicam and Burson-Marsteller. Mr. Jordan called Peter Georgescu, the chairman and CEO of Young & Rubicam, the large New York advertising agency. Mr. Jordan had no formal connection with the company, but he had been a friend of Mr. Georgescu's for over 20 years.

Mr. Georgescu was interviewed by investigators of the Office of Independent Counsel and said that sometime in December 1997, Mr. Jordan had telephoned him and had asked him to take a look

at a young person from the White House for possible work in the New York area.

Mr. Georgescu had responded, "We'll take a look at her in the usual way." And he stated that that was a kind of a code between him and Mr. Jordan, and it meant that if there was an opening for which she was qualified, she would be interviewed and hired, but there would be no special treatment. He testified that Mr. Jordan understood that, and he also said that Mr. Jordan did not engage in any kind of sales pitch about Lewinsky.

Mr. Georgescu said that he then initiated an interview on behalf of Ms. Lewinsky, but his own involvement was arm's length, and that she succeeded or failed totally on her own merits.

He recalled that Mr. Jordan had made another similar request on a previous occasion, and he said that he and Mr. Jordan frequently exchanged opinions about people in the advertising business on an informal basis.

As a result of this telephone call, Ms. Lewinsky was interviewed by another person, a Ms. Celia Berk, who was the managing director of human resources at Burson-Marsteller, a public relations firm that was a division of Young & Rubicam. According to Ms. Berk, this interview was handled "by the book," and while Ms. Lewinsky's interviews were a little bit accelerated, they went through the normal steps.

Ms. Berk testified that nobody put any pressure on her. She said that while both she and the director of corporate practice at Burson-Marsteller, Erin Mills, and another corporate practice associate, Ziad Toubassy, had all liked Ms. Lewinsky and felt she was well qualified, the chairman of the corporate practice group, Mr. Gus Weill, had decided not to hire Lewinsky.

Ms. Mills testified that the procedure under which Ms. Lewinsky was considered involved nothing out of the ordinary. Not a single one of these witnesses testified there was any urgency connected with Mr. Jordan's request.

Ms. Mills also told the FBI that despite the fact that Ms. Lewinsky had been referred by the chairman of Young & Rubicam, their consideration of her was entirely objective. She thought that Ms. Lewinsky was poised and qualified for an entry-level position, but Mr. Weill decided to take a pass. Once again, quid pro quo? No.

Mr. Jordan was a member of the board of directors of Revlon, a company wholly owned by MacAndrews & Forbes Holding company, and Mr. Jordan's law firm had done legal work for both of these companies.

The corporate structure here is complicated, but I will be talking basically about two firms: Revlon—I think we all know what Revlon does—and its parent company, MacAndrews & Forbes Holding.

Mr. Jordan telephoned his old friend, Mr. Richard Halperin, at the holding company on December 11 and said that he had an interviewee or he had an applicant that he wanted to recommend, and he gave Mr. Halperin some information about her. Mr. Halperin testified to the grand jury that it wasn't unusual for Mr. Jordan to call him with an employment recommendation. He had done so at least three other times that Mr. Halperin could recall.

On this occasion, Mr. Jordan told Mr. Halperin on the telephone that Ms. Lewinsky was bright, energetic, enthusiastic, and he encouraged Mr. Halperin to meet with her. Mr. Halperin didn't think there was anything unusual about Mr. Jordan's request, and he testified that in the telephone call Mr. Jordan did not ask him to consider Ms. Lewinsky on any particular timetable, no acceleration of any kind. Indeed, far from there being some heightened sense of urgency, Mr. Halperin explicitly told the FBI that there was no implied time constraint or requirement for fast action.

Ms. Lewinsky came up to New York City and she interviewed with Mr. Halperin on December 18, 1997. Mr. Halperin described her as follows: As a "typical young, capable, enthusiastic Washington, DC-type individual." I don't know if that is pejorative or not——

[Laughter.]

Who described her primary interest as being in public relations. He and Ms. Lewinsky talked about the various companies that MacAndrews & Forbes controlled, and Ms. Lewinsky identified Revlon as a company that she would like to be considered at, and Mr. Halperin decided to send her there for an interview.

Mr. Halperin sent her resume to another person at the holding company—not at Revlon, at the holding company—to a Mr. Jaymie Durnan who was a senior vice president there. He got the resume in mid-December, and he decided to interview her in early January.

You have at the holding company two sets of interviews of Ms. Lewinsky going on. When he returned in early January, Mr. Durnan also scheduled an interview. He met with Ms. Lewinsky on January 8. His decision was made entirely independently of Mr. Halperin's decision, and he wasn't even aware Mr. Halperin had seen Ms. Lewinsky when he met with her on January 8.

Mr. Durnan met with Ms. Lewinsky in the morning and he thought—now there is his view; and you are going to get two views of this interview—Mr. Durnan thought she was an impressive applicant for entry-level work. He was impressed with her, particularly by her work experience at the Pentagon, he told the FBI. He felt she would fit in with the parent company, but there were not any openings there.

Based upon what she had said her interests were, he decided to send her resume over to Revlon, because he thought it matched up well with her interests. He sent the resume over, and he left a message—and now we are going to come to a Revlon person—he left a message with Ms. Allyn Seidman, who was the senior vice president of corporate communications at Revlon.

Now cut to Ms. Lewinsky. Ms. Lewinsky had had a very good interview with Mr. Halperin, both she and Mr. Halperin thought. However, for reasons the record doesn't make clear, Ms. Lewinsky's impression of the Durnan interview was dismal. She thought the interview had not gone well. She thought it had gone poorly. She described herself as being upset and distressed. She had no idea of his positive reaction to her. And this is not just a late analysis. He had already sent the resume. He sent the resume over to Revlon immediately after their interview. But in any event, Ms. Lewinsky

was afraid it had gone poorly, that she had embarrassed Mr. Jordan. So she called up Mr. Jordan.

And on that same day—later—January 8, Mr. Jordan spoke, by telephone, to the CEO of MacAndrews & Forbes, his friend, Mr. Ronald Perelman. He mentioned to Mr. Perelman that Ms. Lewinsky had interviewed at MacAndrews & Forbes, but he made no specific request and he did not ask Mr. Perelman to specifically intervene in any way.

Later that day—and I know this is complicated—Mr. Durnan happened to speak—Mr. Durnan is the second interviewer that Ms. Lewinsky happened to speak to—happened to speak to Mr. Perelman, and Perelman mentioned he had a call from Mr. Jordan about a job candidate. Perelman then said to Durnan, "Let's see what we can do." And Durnan indicated he already, on his own initiative, had been working on this, had talked to Ms. Lewinsky, had sent her resume over to Revlon.

Mr. Perelman, later that day, phoned Mr. Jordan back to say everything is all right, she appeared to be doing a good job, the resume was over at Revlon. Mr. Jordan expressed no urgency, no time constraints. Mr. Perelman didn't say anything out of the ordinary had happened, because it had not.

Now, later that same day, after speaking to Mr. Perelman, Mr. Durnan phoned Ms. Seidman at Revlon, and sent the resume over earlier in the day. He didn't say that Mr. Perelman had mentioned Ms. Lewinsky to him. He simply said to Ms. Seidman: Look, I sent you a resume. I have met with the young woman. If you think she is good, you should hire her.

According to Mr. Durnan, Mr. Perelman never said or implied that Ms. Lewinsky had to be hired. And indeed, Mr. Durnan had already interviewed her and formed a positive impression. According to Ms. Seidman, who is at Revlon, Mr. Durnan gave her a similar account that he gave to the grand jury. He said she ought to interview Ms. Lewinsky, make her own decision, hire her if she thought she was a good candidate only.

The record is crystal clear that Ms. Seidman over at Revlon had no knowledge that Mr. Perelman had ever spoken to anyone about Ms. Lewinsky. Ms. Seidman testified that she made an independent assessment of Ms. Lewinsky. She interviewed her the next day. She told the grand jury that she found Ms. Lewinsky to be "a talented, enthusiastic, bright young woman who was very eager. I liked that in my department."

At the conclusion of the interview, she intended to make an offer to Ms. Lewinsky, but it was contingent on the opinion of two other people—a Ms. Jenna Sheldon, who is the manager of human resources at Revlon, and Ms. Nancy Risdon, who is the manager of public relations for corporate affairs. Ms. Seidman testified that after they both interviewed Ms. Lewinsky, Ms. Risdon told her that she found her very impressive, and Ms. Sheldon had also been very impressed. Ms. Risdon told the FBI that she had been impressed with Ms. Lewinsky who, although she had no public relations experience, was "bright and articulate." On the basis of all this, Ms. Seidman decided to offer Ms. Lewinsky an entry-level job as public relations administrator. The offer was made, and Ms. Lewinsky ac-

cepted. And, I repeat, the record evidence is uncontradicted that the fix was not on at all in this process.

This was the third company Ms. Lewinsky had interviewed with, and on this series of interviews she was successful. Nobody in any of these companies suggested there was any quid pro quo link. The only person—the only person—in this record who talked about trying to have Ms. Lewinsky use signing of the affidavit as leverage to get a job was none other than Linda Tripp, that paragon of fateful friendship.

On the audiotapes, it is Ms. Tripp who frequently urges Ms. Lewinsky not to sign an affidavit until she has a job in New York. It is not clear if Ms. Tripp knew about the U.N. job that Ms. Lewinsky had. On the audiotape, Ms. Lewinsky sometimes professes agreement with Ms. Tripp's advice, saying she will not sign an affidavit until she has a job. But, as Ms. Lewinsky testified to the grand jury—and, again, Ms. Lewinsky is testifying under the threat of perjury, which will blow away her immunity agreement—she was lying to Ms. Tripp when she said she would wait to sign the affidavit until she got a job.

As Ms. Lewinsky testified to the grand jury, her statement to Ms. Tripp about Mr. Jordan assisting her in a quid pro quo sense was not true. She said it only because Ms. Tripp was insisting that she promise her not to do this. But, in fact, the affidavit was already signed when Ms. Lewinsky made that promise. Once again, quid pro quo? No. That is some of the direct evidence.

Let's look at the circumstantial evidence, the alleged circumstantial evidence. The quid pro quo theory rests on assumptions about why things happened and, on the facts, about when things happened. The former requires logic, but the second is a matter of fact.

I mentioned previously that article II of the subpart (4) here uses the word "intensified." It didn't say that the job search began as an effort to silence Ms. Lewinsky. It only says that it "intensified" as a result of that process.

The original charge made by the independent counsel—and it is there in the independent counsel's referral at page 181—was an allegation that the President helped Ms. Lewinsky obtain a job in New York at a time when she would have been a witness against him. However, the House committee looked at the evidence I think in the five volumes and, even though they have not referred to it here very much, decided that that theory would not get off the runway. So they revised their claim and gave us a kind of wimpified version, alleging not initiation but intensification.

Now, under the right circumstances, it is plain that helping somebody find a job is a perfectly acceptable thing to do. There is nothing wrong with it. Mr. Manager HUTCHINSON told you that—and I quote here—"There is nothing wrong with helping somebody get a job. But we all know there is one thing forbidden in public office: we must avoid quid pro quo, which is: This for that."

Now, he went on to assert that the President's conduct "crossed the line," as he put it, when the job search assistance became "tied and interconnected"—those are his words—with the President's desire to get a false affidavit. And then he went on to say, "You will see"—that is a prediction that Mr. Manager HUTCHINSON made to you—"You will see that they are totally interconnected, inter-

twined, interrelated; and that is where the line has crossed into obstruction."

Mr. Manager HUTCHINSON pointed to a critical event for their quid pro quo theory, and that is the entry on December 11, 1997, by Judge Wright, the judge in the Paula Jones case, of an order pertaining to discovery in the Paula Jones case. This is the critical event, according to the managers. But let's look closely at this so-called "critical event" because it's the only claim—only factual claim—the managers make of some causal relationship between the job search and the Jones case. And that claim is dead wrong; and it is demonstrably dead wrong.

The managers have argued that what brought Mr. Jordan into action to help Ms. Lewinsky find a job, what really jump-started the process, was Judge Wright's December 11 order. And that order concerned discovery of relationships the President had—allegedly had—during the search period of time with women who were State or Federal employees.

In the House, Chief Counsel Schippers powerfully made the point about how important this December 11 order was. ". . . why the sudden interest," he asked, "why the total change in focus and effort?" Nobody but Betty Currie really cared about helping Ms. Lewinsky throughout November, even after the President learned that her name was on the prospective witness list. Did something happen [that moved] the job search from a low to a high priority on that day?

Oh, yes, something happened. On the morning of December 11, 1997, Judge Susan Webber Wright ordered that Paula Jones was entitled to information regarding these other women.

Now, Mr. Manager HUTCHINSON, again, emphasized the impact of this December 11 order was dramatic. He stood here and told you that the President's attitude suddenly changed, and what started out as a favor for Betty Currie in finding Ms. Lewinsky a job dramatically changed into something sinister after Ms. Lewinsky became a witness.

> And so what triggers [this is Manager HUTCHINSON]—let's look at the chain of events: The judge—the witness list came in, the judge's order came in, that triggered the President into action and the President triggered Vernon Jordan into action. That chain reaction here is what moved the job search along . . . remember what else happened on that [December 11] again. That was the same day that Judge Wright ruled that the questions about other relationships could be asked by the Jones attorneys.

Mr. Manager HUTCHINSON presented in his very polished and able presentation a chart. It was exhibit 1. I have taken the liberty of borrowing it for our own purposes. You see the key is outlined in detail what happened on December 11. The very first item is that "Judge Susan Webber issues order allowing testimony on Lewinsky." The second meeting between Lewinsky and Jordan, "leads provided/recommendation calls placed," and then, later, the "President and Jordan talk about a job for Lewinsky."

That is what the chart says. But when you look at the uncontested facts, this isn't even smoke and mirrors. It is worse.

First of all, Ms. Lewinsky entered Mr. Jordan's building for their meeting at 12:57 on December 11. As we see here from the chart, the entry chart of Mr. Jordan's law firm, Ms. Lewinsky's name is

misspelled, and she identified this as her entry into the law firm. But this did not spring from, magically, the entry of the judge's order. It was scheduled 3 days earlier, on December 8. And even that telephone call was pursuant to an agreement made between Ms. Lewinsky and Mr. Jordan two weekends before then. It had nothing, whatever, to do with the judge's order.

Indeed, after her first meeting with Mr. Jordan on November 5, Ms. Lewinsky testified that she had a follow-up conversation by telephone with Mr. Jordan around Thanksgiving, and he advised her he was working on the job search as he had time for it. He asked her to call him back in early December. Mr. Jordan testified he was out of the country from the day after Thanksgiving until December 4. He also testified that on December 5—this is before the witness list—Ms. Currie called and reminded him that Ms. Lewinsky was expecting his call. He asked Ms. Currie to have Ms. Lewinsky call him. She does so on December 8 and they agreed to meet at Mr. Jordan's office on December 11.

So this meeting, this sinister meeting, was arranged by three people who had no knowledge whatever about the Paula Jones witness list at the time they acted. Now, Ms. Lewinsky herself was also out of Washington for most of the period from Thanksgiving to December 4, first in Los Angeles and then overseas.

Inexplicably, but I think significantly, because it says something about the strength of the case, the House managers ignore this key piece of testimony that when the meeting was set up it is uncontradicted. The point is that the contact between Mr. Jordan and Ms. Lewinsky resumed in December not because of something having to do with the order, but because they had agreed it would. The gap is attributable—the gap in timing—to Mr. Jordan's travel schedule.

Let's look at when this discovery order was entered. It was, in fact, entered late in the day of December 11 after the conclusion of a conference call among all the counsel in the Paula Jones case. We have here on the chart a blowup of the clerk's minutes.

It is a great accommodation to lawyers when in a case a judge will have conference telephone calls because it means you don't have to travel to a different city. There were a number of these held in the Jones case. This was a conference call that began, as the clerk's minutes indicate, at 5:33 p.m. Little Rock time, in the afternoon. That would be 6:33 in Washington, DC. It ended at 6:50 p.m. in Little Rock, or 7:50 in Washington, DC.

Quite late in the conference call Judge Wright took up other matters and advised counsel that an order on the plaintiff's motion to compel testimony had been filed and Barry—Barry Ward, the judge's clerk—will fax a copy of the order on that motion to compel counsel. So, some time after 7:50 p.m. counsel get the witness list. Notice that this proceeding is so late in the day, I don't know if you can see it, but when the clerk's minutes are filed, they are filed not on December 11, but on December 12.

Finally, while we don't even have evidence of a telephone call between the President and Mr. Jordan—we are back now to Mr. Manager HUTCHINSON's chart No. 1—we don't have any evidence that the President, in fact, ever placed a call to Mr. Jordan on this

date. The President was out of the city. But if the call occurred, it must have occurred by 5:55 p.m.

Let's, again, look at this chart. December 11 is so important that the managers have put it on the chart twice. It is the only date on the chart that appears twice. "The President and Jordan talk about a job for Lewinsky." Clearly what they are telling you is that first you get the order. That energizes, that jump starts the process, and then the President talks to Vernon Jordan. As I said, if a call occurred on that day, the earliest you could have had any knowledge of the order would have been 7:50 p.m.

There is a problem, though, when you think that maybe the President and Vernon Jordan talked on this date, even if we don't have evidence of it. And the problem is that at 7:50 p.m., Mr. Vernon Jordan was high over the Atlantic Ocean in an airplane. He was on his way to Amsterdam. He testified that "I left on United Flight 946 at 5:55 from Dulles Airport." That is where Mr. Jordan was on the evening of December 11. He had taken off even before the conference call.

This makes no sense. The managers' theory just makes no sense. His meeting with Ms. Lewinsky and his calls on her behalf had taken place earlier in the day. The President could not have spoken to him about the entry of Judge Wright's discovery order. The entry of that order had nothing whatever to do with Mr. Jordan's assistance to Ms. Lewinsky. This claim of a causal relation totally collapses when you look at the evidence.

The charts purporting to show causation are also riddled with errors. I only want to show a few of them. Again, we borrowed the chart from Mr. Manager HUTCHINSON, his chart No. 7. Now he showed you this chart and it purports to be an account of what happened on January 5, 1998. You see how the President and Ms. Lewinsky appear to be conferring about the affidavit that she is going to be filing in the Jones case. But when you look at the real facts, the chart becomes a fiction.

Mr. Manager HUTCHINSON told you:

> Let's go to January 5th. This is a sort of summary of what happened on that day. Ms. Lewinsky meets with her attorney, Mr. Carter, for an hour. Carter drafts the affidavit for Ms. Lewinsky just a few minutes later . . .

And Mr. Manager HUTCHINSON continued:

> Frank Carter drafts the affidavit. She is so concerned about it, she calls the President. The President returns Ms. Lewinsky's phone call.

Now, the suggestion here—and this is our old circumstantial evidence problem—the suggestion from this fact pattern is that Ms. Lewinsky obtained a draft affidavit from her lawyer, Mr. Carter, on January 5, and then in a call with the President later that day she offered it to him for his review.

Possible? Yes. True? No. The facts here simply do not bear out this chart. Why is that? Well, it is because Mr. Carter's grand jury testimony is very clear that he drafted the affidavit on the morning of January 6, and he even billed for it on that morning. He did not draft it, and Ms. Lewinsky did not have it, on January 5. There is no causation here, no linkage. The theory on this chart doesn't stand up. And if I may take something else from the House man-

agers—not simply their chart, but to borrow Mr. Manager BRYANT's expression—"that dog won't hunt."

Ms. Lewinsky could not have offered to show the President a draft affidavit she herself could not have had on January 5. The idea that the telephone call on that day is about that affidavit is sheer, unsupported speculation and, even worse, it is speculation demolished by fact.

Let's kick the tires of another exhibit. Chart No. 8, which was shown to you by Mr. Manager HUTCHINSON, purports to describe the events of January 6. Again, it sets forth a chain of events which makes it look as though Mr. Jordan was himself intimately involved in drafting Ms. Lewinsky's affidavit. Mr. Manager HUTCHINSON told you, when he showed you this chart—and I want to quote his exact words:

> The next exhibit is January 6. On this particular day, Ms. Lewinsky picks up the draft affidavit. At 2:08 to 2:10 p.m., she delivers that affidavit. To whom? Mr. Jordan. . . . At 3:48, he telephones Ms. Lewinsky about the draft affidavit, and at 3:49—you will see in red—both agree to delete a portion of the affidavit that created some implication that maybe she had been alone with the President.
>
> So Mr. Jordan was very involved in the drafting of the affidavit and the contents of that.

That is the theory proposed by the chart. That is the hypothesis they offer on the basis of the circumstantial evidence. But there are problems that absolutely destroy that because when we look beyond the suggestive juxtaposition and consider material overlooked by the managers, a very different picture emerges.

The key "fact" that chart 8 tries to establish is the statement that at 3:49 Mr. Jordan telephoned Ms. Lewinsky to discuss the draft affidavit, and they allegedly agreed "to delete an implication that she had been alone with the President."

There is a very serious difficulty with this "theory." The chart blithely states that "both agree[d] to delete [the] implications that she had been alone with the President." But that is not what the evidence shows.

Ms. Lewinsky testified that she spoke to Mr. Jordan because she had concerns about the draft affidavit. According to her testimony, when asked whether Mr. Jordan agreed with what were clearly Ms. Lewinsky's ideas about changes in the affidavit, Ms. Lewinsky said, "Yes, I believe so."

Mr. Jordan recalled the conversation in which Ms. Lewinsky raised the subject of her draft affidavit. He remembered her saying that she "had some questions about the draft of the affidavit." But his testimony was emphatic that he was "not interested in the details," that the "problems she had with what had been drafted for her signature [were] for her to work out with her counsel," and that "you [Ms. Lewinsky] have to talk to your lawyer about it." And Ms. Lewinsky did talk to her lawyer about it.

The record is perfectly clear about that. Indeed, it could not be clearer, although you would not know this from chart 8, that the idea of deleting the reference to her being alone with the President came from her own lawyer, Mr. Carter. He testified to the grand jury—this is the lawyer who actually drafted the affidavit. He was referring to a passage about Ms. Lewinsky being alone with the President, and he said:

Paragraph 6 has in its [draft] form as the last part of the last sentence "and would not have been a 'private meeting, that is not behind closed doors'. . . ."

According to Mr. Carter:

This paragraph was modified when we sat down in my office [on January 7], the day after the events described on chart 8.

Mr. Carter further testified that "before the meeting on the 7th, it was my opinion that I did not want to give Paula Jones' attorney any kind of a hint of a one-on-one meeting. What I told Monica was, 'If they ask you about it, you will tell them about it. But I'm not putting it in the affidavit. I am not going to give them that lead to go after in the affidavit, because my objective is not to have you be deposed.'"

It is clearly Mr. Carter who deleted the reference to being alone with the President. The bottom line is that the insinuations on that chart just don't survive scrutiny.

I want to say a final thing about all the charts involving circumstantial evidence. You remember how many telephone calls were up on these charts. I am going to let you in on a little secret—a secret that a lot of you who are lawyers know. It is pretty easy to get telephone call records and to identify telephone calls. But it is a common trick to put them up, even though you don't know what is going on in the telephone calls, and ask people to assume some insidious relationship between events and the telephone call. No matter how many telephone calls are listed on the chart, you don't know, without testimony, what was happening in that phone call, unless the mere existence—and there are cases where the mere existence of a phone call is probative, but not in these cases. Here they are trying to weave a web, and no particular call is of significant importance.

The incontrovertible evidence shows that, in fact, Mr. Jordan spoke to the President on many, many, many occasions. He was a friend; he has been a friend of the President since 1973, and a call between them was a common occurrence. When asked in the grand jury if Mr. Jordan believed that the pattern of telephone calls to the President was "striking," Mr. Jordan replied, "It depends on your point of view. I talk to the President of the United States all the time, and so it's not striking to me."

Mr. Jordan also testified that he never had a telephone conversation with the President in which Ms. Lewinsky was the only topic.

The House managers ask you to believe, simply on faith, that if two things happen on the same day, they are related. This relation may be logical, but it is not necessarily factual. I just want to make this point with a couple of telephone calls. Take Mr. Manager HUTCHINSON's chart for January 17, 1998, the day of the President's deposition in the Jones case.

This chart suggests that there are two calls between Mr. Jordan and the President after the President had concluded his deposition. One call is at 5:38, and the other is at 7:02. The chart does not tell you several important things. First, these two calls each lasted 2 minutes. Second, and more significantly, Mr. Jordan testified to the grand jury as to both telephone conversations:

On Saturday, the 17th, in the two conversations I had with the President of the United States, we did not talk about Monica Lewinsky or his testimony in the deposition.

Mr. Jordan was asked:

Or [about] the questions asked of him in the deposition?

And he replied:

That is correct.

In another exchange, the prosecutors asked Mr. Jordan:

Did the President ever indicate to you [in the January 17 telephone conversations] that Monica Lewinsky was one of the topics that had come up?

Jordan replied:

He did not.

The prosecutors asked:

Did the President ever indicate to you [in these two conversations] that your name had come up in the deposition as it related to Monica Lewinsky?

And Mr. Jordan answered:

He did not.

The managers, in the absence of evidence that anyone endeavored to obtain Ms. Lewinsky a job in exchange for her silence, indeed, in the face of direct testimony of all of those involved that this did not happen, ask you to simply speculate. They ask you to speculate that since they have thrown a lot of telephone calls up there, they must have some sinister meaning. And they ask you to speculate that a lot of those phone calls must have been about Ms. Lewinsky, and they ask you to speculate further that in one of those unidentified, unknown phone calls, somebody must have said, "Let's get Ms. Lewinsky a job in exchange for her silence."

There is no evidence for that. It is not there. It is just a theory.

With regard to all this evidence about the job search, when you look at these dates, when you have the right chronology in mind, and when you look at the relevant and uncontested facts, these facts are there; they don't have to be discovered: There is no—no—evidence of wrongdoing of any kind in connection with Ms. Lewinsky's job search effort in New York City. This is not a case of the managers' presentation resting on even circumstantial as opposed to direct evidence. They don't even have circumstantial evidence here. All they have is a theory about what happened, which isn't based on any evidence either direct or circumstantial.

Nothing in this evidence is really contested when you get right down to it; strictly as a matter of who said what to whom when. When lawyers ask you to "keep your eye on the big picture," when they ask you, "don't lose the forest for the trees," or "don't get lost in the details," that is usually because the details—the stubborn facts—refute and contradict the big picture.

So it is here. You can keep adding zero to zero to zero for a very long time, and indeed forever, and you will still have zero. The big picture here just doesn't exist. And no matter how many times the

House managers keep making the assertion, there is just no evidence of any kind.

I realize that it has taken us a good bit of time and painstaking—perhaps even painful—attention for each one of you to walk through these facts in a lawyerly manner. I am also keenly aware of the old saying that when all is said and done with a lawyer, there is more said than done. But we needed to take a look carefully and specifically at this evidentiary material with regard to these five grounds in the same way that Ms. Mills took you through very specifically yesterday with regard to the other two grounds to try and dispel the popular misconception that we were either unwilling or unable to rebut the facts. We have rebutted the facts.

The simple fact is that there is no evidence indirectly to support the allegation that the President obstructed justice in his December 17 telephone call with Ms. Lewinsky, in his statements to his aides, in his statements to Betty Currie with relation to gifts, or the job search. It sometimes has been claimed by the managers that we have adopted a "so what" defense trying to take lightly or to justify the improper actions that are at the root of this case. Well, Senators, with all respect, that argument is easy to assert, but it is false, a straw man asserted, only to be knocked down.

We have tried in our presentations the last few days and today to treat the evidence in a fair and a candid and a realistic way about the facts as the record reveals them. We have tried to show you that the core charges of obstruction of justice and perjury cannot be proven. We are not saying that the alleged conduct doesn't matter. We are saying that perjury didn't occur, and obstruction of justice didn't happen.

We haven't tried to sugar-coat or excuse conduct that is wrong. I think that Mr. Manager BUYER used the right phrase when he referred to "self-inflicted wounds." There is no doubt that there are self-inflicted wounds here, wounds that are very real and very painful and very troubling. There is just no question about that. The question before you is whether these self-inflicted wounds rise to such a level of lawless and unconstitutional conduct that they leave you no alternative, no choice but to assume the awesome responsibility for reversing the results of two national elections.

On that question, what the situation demands is not eloquence, which the very able managers have in abundance, but rather a relentless focus on the facts, the law, and the Constitution, all of which are on the side of the President.

It is a great honor for me to stand here. This body has been called "the anchor of the Republic." And it is that constitutional ability, that political sanity, that is needed now. There is a story, which is perhaps apocryphal, that when Thomas Jefferson returned from France where he served as Ambassador while his colleagues were writing the Constitution, that he met with George Washington, and he asked Washington why they had found it necessary to create the Senate. Washington is said to have silently removed the saucer from his teacup and poured the tea into the saucer and told Jefferson that like the act he had just performed, the Senate would be designed to cool the passion of the moment. Historically, this place has been really a haven of sanity, balance, wisdom in de-

bating controversial issues which have been passionately felt, with candor, with courage, and civility.

So once again, I think it is your responsibility, and yours alone, committed to you by the Constitution, to make a very somber judgment. The President has spoken powerfully and personally of his remorse for what he has done.

Others have pointed out the poisonous partisanship that led the other body to argue for impeachment on the most narrowly partisan vote in its history.

I think that the bipartisan manner, however, in which you have conducted this impeachment trial is a welcome change from the events of the last year.

We ask only that you give this case and give this country constitutional stability and the political sanity which this country deserves. The President did not commit perjury, he did not obstruct justice, and there are no grounds to remove him from office.

Thank you.

RECESS

The CHIEF JUSTICE. The Chair recognizes the majority leader.

Mr. LOTT. Mr. Chief Justice, I ask unanimous consent that we recess the proceedings for 15 minutes, but that Senators be prepared to resume at 5 minutes after 4, because we have to hear the eloquence of one of our former colleagues.

There being no objection, at 3:49 p.m., the Senate recessed until 4:10 p.m.; whereupon, the Senate reassembled when called to order by the Chief Justice.

The CHIEF JUSTICE. The Chair recognizes the majority leader.

Mr. LOTT. Thank you, Mr. Chief Justice. I believe the Senate is prepared now to hear the final presentation to be made by White House counsel, and at the conclusion of that, I will have a brief wrapup, a statement to make about how we hope to proceed on Friday and generally on Saturday. I will do that at the close of this presentation. I yield the floor, Mr. Chief Justice.

The CHIEF JUSTICE. The Chair recognizes Mr. Counsel Bumpers to continue the presentation in the case of the President.

Mr. Counsel BUMPERS. Mr. Chief Justice, my distinguished House managers from the House of Representatives, colleagues, I have seen the look of disappointment on many faces, because I know a lot of people really thought they would be rid of me once and for all.

[Laughter.]

I have taken a lot of ribbing this afternoon. But I have seriously negotiated with some people, particularly on this side, about an offer to walk out and not deliver this speech in exchange for a few votes.

[Laughter.]

I understand three have it under active consideration.

[Laughter.]

It is a great joy to see you, and it is especially pleasant to see an audience which represents about the size of the cumulative audience I had over a period of 24 years.

[Laughter.]

I came here today for a lot of reasons. One was that I was promised a 40-foot cord. I have been shorted 28 feet. CHRIS DODD said he didn't want me in his lap. I assume he arranged for the cord to be shortened.

I want to especially thank some of you for your kind comments in the press when it received some publicity that I would be here to close the debate on behalf of the White House counsel and the President.

I was a little dismayed by Senator BENNETT's remark. He said, "Yes, Senator Bumpers is a great speaker, but he was never persuasive with me because I never agreed with him."

[Laughter.]

I thought he could have done better than that.

[Laughter.]

You can take some comfort, colleagues, in the fact that I am not being paid, and when I finish, you will probably think the White House got their money's worth.

[Laughter.]

I have told audiences that over 24 years, I went home almost every weekend and returned usually about dusk on Sunday evening. And you know the plane ride into National Airport, when you can see the magnificent Washington Monument and this building from the window of the airplane—I have told these students at the university, a small liberal arts school at home, Hendrix—after 24 years of that, literally hundreds of times, I never failed to get goose bumps.

The same thing is true about this Chamber. I can still remember as though it was yesterday the awe I felt when I first stepped into this magnificent Chamber so full of history, so beautiful. And last Tuesday, as I returned, after only a short 3-week absence, I still felt that same sense of awe that I did the first time I walked in this Chamber.

Colleagues, I come here with some sense of reluctance. The President and I have been close friends for 25 years. We fought so many battles back home together in our beloved Arkansas. We tried mightily all of my years as Governor, and his, and all of my years in the Senate when he was Governor, to raise the living standard in the delta area of Mississippi, Arkansas and Louisiana, where poverty is unspeakable, with some measure of success; not nearly enough.

We tried to provide health care for the lesser among us, for those who are well off enough they can't get on welfare, but not making enough to buy health insurance. We have fought about everything else to improve the educational standards for a State that for so many years was at the bottom of the list, or near the bottom of the list, of income, and we have stood side by side to save beautiful pristine areas in our State from environmental degradation.

We even crashed a twin engine Beech Bonanza trying to get to the Gillett coon supper, a political event that one misses at his own risk. We crashed this plane on a snowy evening at a rural airport off the runway, sailing out across the snow, jumped out—jumped out—and ran away unscathed, to the dismay of every politician in Arkansas.

[Laughter.]

The President and I have been together hundreds of times at parades, dedications, political events, social events and in all of those years and all of those hundreds of times we have been together, both in public and in private, I have never one time seen the President conduct himself in a way that did not reflect the highest credit on him, his family, his State and his beloved Nation.

The reason I came here today with some reluctance—please don't misconstrue that, it has nothing to do with my feelings about the President, as I have already said—but it is because we are from the same State, and we are long friends. I know that necessarily diminishes to some extent the effectiveness of my words. So if Bill Clinton, the man, Bill Clinton, the friend, were the issue here, I am quite sure I would not be doing this. But it is the weight of history on all of us, and it is my reverence for that great document—you have heard me rail about it for 24 years—that we call our Constitution, the most sacred document to me next to the Holy Bible.

These proceedings go right to the heart of our Constitution where it deals with impeachment, the part that provides the gravest punishment for just about anybody—the President—even though the framers said we are putting this in to protect the public, not to punish the President.

Ah, colleagues, you have such an awesome responsibility. My good friend, the senior Senator from New York, has said it well. He says a decision to convict holds the potential for destabilizing the Office of the Presidency. And those 400 historians—and I know some have made light about those historians, are they just friends of Bill?

Last evening, I went over that list of historians, many of whom I know, among them C. Vann Woodward. In the South we love him. He is the preeminent southern historian in the Nation. I promise you—he may be a Democrat, he may even be a friend of the President, but when you talk about integrity, he is the walking personification, exemplification of integrity.

Well, colleagues, I have heard so many adjectives to describe this gallery and these proceedings—historic, memorable, unprecedented, awesome. All of those words, all of those descriptions are apt. And to those, I would add the word "dangerous," dangerous not only for the reasons I just stated, but because it is dangerous to the political process. And it is dangerous to the unique mix of pure democracy and republican government Madison and his colleagues so brilliantly crafted and which has sustained us for 210 years.

Mr. Chief Justice, this is what we lawyers call "dicta"—this costs you nothing. It is extra. But the more I study that document, and those 4 months at Philadelphia in 1787, the more awed I am. And you know what Madison did—the brilliance was in its simplicity—he simply said: Man's nature is to get other people to dance to their tune. Man's nature is to abuse his fellow man sometimes. And he said: The way to make sure that the majorities don't abuse the minorities, and the way to make sure that the bullies don't run over the weaklings, is to provide the same rights for everybody. And I had to think about that a long time before I delivered my first lecture at the University of Arkansas last week. And it made so much sense to me.

But the danger, as I say, is to the political process, and dangerous for reasons feared by the framers about legislative control of the Executive. That single issue and how to deal with impeachment was debated off and on for the entire 4 months of the Constitutional Convention. But the word "dangerous" is not mine. It is Alexander Hamilton's—brilliant, good-looking guy—Mr. Ruff quoted extensively on Tuesday afternoon in his brilliant statement here. He quoted Alexander Hamilton precisely, and it is a little arcane. It isn't easy to understand.

So if I may, at the expense of being slightly repetitious, let me paraphrase what Hamilton said. He said: The Senate had a unique role in participating with the executive branch in appointments; and, two, it had a role—it had a role—in participating with the executive in the character of a court for the trial of impeachments. But he said—and I must say this; and you all know it—he said it would be difficult to get a, what he called, well-constituted court from wholly elected Members. He said: Passions would agitate the whole community and divide it between those who were friendly and those who had inimical interests to the accused; namely, the President. Then he said—and these are his words: The greatest danger was that the decision would be based on the comparative strength of the parties rather than the innocence or guilt of the President.

You have a solemn oath, you have taken a solemn oath, to be fair and impartial. I know you all. I know you as friends, and I know you as honorable men. And I am perfectly satisfied to put that in your hands, under your oath.

This is the only caustic thing I will say in these remarks this afternoon, but the question is, How do we come to be here? We are here because of a 5-year, relentless, unending investigation of the President, $50 million, hundreds of FBI agents fanning across the Nation, examining in detail the microscopic lives of people—maybe the most intense investigation not only of a President, but of anybody ever.

I feel strongly about this because of my State and what we have endured. So you will have to excuse me, but that investigation has also shown that the judicial system in this country can and does get out of kilter unless it is controlled. Because there are innocent people—innocent people—who have been financially and mentally bankrupt.

One woman told me 2 years ago that her legal fees were $95,000. She said, "I don't have $95,000. And the only asset I have is the equity in my home, which just happens to correspond to my legal fees of $95,000." And she said, "The only thing I can think of to do is to deed my home." This woman was innocent, never charged, testified before a grand jury a number of times. And since that time she has accumulated an additional $200,000 in attorney fees.

Javert's pursuit of Jean Valjean in Les Miserables pales by comparison. I doubt there are few people—maybe nobody in this body—who could withstand such scrutiny. And in this case those summoned were terrified, not because of their guilt, but because they felt guilt or innocence was not really relevant. But after all of those years, and $50 million of Whitewater, Travelgate, Filegate—you

name it—nothing, nothing. The President was found guilty of nothing—official or personal.

We are here today because the President suffered a terrible moral lapse of marital infidelity—not a breach of the public trust, not a crime against society, the two things Hamilton talked about in Federalist Paper No. 65—I recommend it to you before you vote—but it was a breach of his marriage vows. It was a breach of his family trust. It is a sex scandal. H.L. Mencken one time said, "When you hear somebody say, 'This is not about money,' it's about money."

[Laughter.]

And when you hear somebody say, "This is not about sex," it's about sex.

You pick your own adjective to describe the President's conduct. Here are some that I would use: indefensible, outrageous, unforgivable, shameless. I promise you the President would not contest any of those or any others.

But there is a human element in this case that has not even been mentioned. That is, the President and Hillary and Chelsea are human beings. This is intended only as a mild criticism of our distinguished friends from the House. But as I listened to the presenters, to the managers, make their opening statements, they were remarkably well prepared and they spoke eloquently—more eloquently than I really had hoped.

But when I talk about the human element, I talk about what I thought was, on occasion, an unnecessarily harsh, pejorative description of the President. I thought that the language should have been tempered somewhat to acknowledge that he is the President. To say constantly that the President lied about this and lied about that—as I say, I thought that was too much for a family that has already been about as decimated as a family can get. The relationship between husband and wife, father and child, has been incredibly strained, if not destroyed. There has been nothing but sleepless nights, mental agony, for this family, for almost 5 years, day after day, from accusations of having Vince Foster assassinated, on down. It has been bizarre.

I didn't sense any compassion. And perhaps none is deserved. The President has said for all to hear that he misled, he deceived, he did not want to be helpful to the prosecution. And he did all of those things to his family, to his friends, to his staff, to his Cabinet, and to the American people. Why would he do that? Well, he knew this whole affair was about to bring unspeakable embarrassment and humiliation on himself, his wife whom he adored, and a child that he worshipped with every fiber of his body and for whom he would happily have died to spare her or to ameliorate her shame and her grief.

The House managers have said shame, an embarrassment is no excuse for lying. The question about lying—that is your decision. But I can tell you, put yourself in his position—and you have already had this big moral lapse—as to what you would do. We are, none of us, perfect. Sure, you say, he should have thought of all that beforehand. And indeed he should have, just as Adam and Eve should have, just as you and you and you and you and millions of

other people who have been caught in similar circumstances should have thought of it before. As I say, none of us is perfect.

I remember, Chaplain—the Chaplain is not here; too bad, he ought to hear this story. This evangelist was holding this great revival meeting and in the close of one of his meetings he said, "Is there anybody in this audience who has ever known anybody who even comes close to the perfection of our Lord and Saviour, Jesus Christ?" Nothing. He repeated the challenge and, finally, a little-bitty guy in the back held up his hand. "Are you saying you have known such a person? Stand up." He stood up. "Tell us, who was it?" He said, "My wife's first husband."

Make no mistake about it: Removal from office is punishment. It is unbelievable punishment, even though the framers didn't quite see it that way. Again, they said—and it bears repeating over and over again—they said they wanted to protect the people. But I can tell you this: The punishment of removing Bill Clinton from office would pale compared to the punishment he has already inflicted on himself. There is a feeling in this country that somehow or another Bill Clinton has gotten away with something. Mr. Leader, I can tell you, he hasn't gotten away with anything. And the people are saying: "Please don't protect us from this man." Seventy-six percent of us think he is doing a fine job; 65 to 70 percent of us don't want him removed from office.

Some have said we are not respected on the world scene. The truth of the matter is, this Nation has never enjoyed greater prestige in the world than we do right now. I saw Carlos Menem, President of Argentina, a guest here recently, who said to the President, "Mr. President, the world needs you." The war in Bosnia is under control; the President has been as tenacious as anybody could be about Middle East peace; and in Ireland, actual peace; and maybe the Middle East will make it; and he has the Indians and the Pakistanis talking to each other as they have never talked to each other in recent times.

Vaclav Havel said, "Mr. President, for the enlargement of the North Atlantic Treaty Organization, there is no doubt in my mind that it was your personal leadership that made this historic development possible." King Hussein: "Mr. President, I've had the privilege of being a friend of the United States and Presidents since the late President Eisenhower, and throughout all the years in the past I have kept in touch, but on the subject of peace, the peace we are seeking, I have never, with all due respect and all the affection I held for your predecessors, known someone with your dedication, clear-headedness, focus, and determination to help resolve this issue in the best way possible."

I have Nelson Mandela and other world leaders who have said similar things in the last 6 months. Our prestige, I promise you, in the world, is as high as it has ever been.

When it comes to the question of perjury, you know, there is perjury and then there is perjury. Let me ask you if you think this is perjury: On November 23, 1997, President Clinton went to Vancouver, BC. And when he returned, Monica Lewinsky was at the White House at some point, and he gave her a carved marble bear. I don't know how big it was. The question before the grand jury, August 6, 1998:

What was the Christmas present or presents that he got for you?
Answer: Everything was packaged in the Big Black Dog or big canvas bag from the Black Dog store in Martha's Vineyard and he got me a marble bear's head carving. Sort of, you know, a little sculpture, I guess you would call, maybe.
Was that the item from Vancouver?
Yes.

Question, on the same day of the same grand jury:

When the President gave you the Vancouver bear on the 28th, did he say anything about what it means?
Answer: Hmm.
Question: Well, what did he say?
Answer: I think he—I believe he said that the bear is the—maybe an Indian symbol for strength—you know, to be strong like a bear.
Question: And did you interpret that to be strong in your decision to continue to conceal the relationship?
Answer: No.

The House Judiciary Committee report to the full House, on the other hand, knowing the subpoena requested gifts, is that giving Ms. Lewinsky more gifts on December 28 seems odd. But Ms. Lewinsky's testimony reveals why he did so. She said that she "never questioned that we would not ever do anything but keep this private, and that meant to take whatever appropriate steps needed to be taken to keep it quiet."

They say:

The only logical inference is that the gifts, including the bear symbolizing strength, were a tacit reminder to Ms. Lewinsky that they would deny the relationship, even in the face of a Federal subpoena.

She just got through saying "no." Yet, this report says that is the only logical inference. And then the brief that came over here accompanying the articles of impeachment said, "On the other hand, more gifts on December 28th . . ." Ms. Lewinsky's testimony reveals her answer. She said that she "never questioned that we were ever going to do anything but keep this private, and that meant to take whatever appropriate steps needed to be taken to keep it quiet."

Again, they say in their brief:

The only logical inference is that the gifts, including the bear symbolizing strength, were a tacit reminder to Ms. Lewinsky that they would deny the relationship even in the face of a Federal subpoena.

Is it perjury to say the only logical inference is something when the only shred of testimony in the record is, "No, that was not my interpretation. I didn't infer that"? Yet, here you have it in the committee report and you have it in the brief. Of course, that is not perjury.

First of all, it is not under oath. But I am a trial lawyer and I will tell you what it is; it is wanting to win too badly. I have tried 300, 400, maybe 500 divorce cases. Incidentally, you are being addressed by the entire South Franklin County, Arkansas Bar Association. I can't believe there were that many cases in that little town, but I had a practice in surrounding communities, too. In all those divorce cases, I would guess that in 80 percent of the contested cases perjury was committed. Do you know what it was about? Sex. Extramarital affairs. But there is a very big difference in perjury about a marital infidelity in a divorce case and perjury

about whether I bought the murder weapon, or whether I concealed the murder weapon or not. And to charge somebody with the first and punish them as though it were the second stands our sense of justice on its head.

There is a total lack of proportionality, a total lack of balance in this thing. The charge and the punishment are totally out of sync. All of you have heard or read the testimony of the five prosecutors who testified before the House Judiciary Committee—five seasoned prosecutors. Each one of them, veterans, said that under the identical circumstances of this case, they would never charge anybody because they would know they couldn't get a conviction. In this case, the charges brought and the punishment sought are totally out of sync. There is no balance; there is no proportionality.

But even stranger—you think about it—even if this case had originated in the courthouse rather than the Capitol, you would never have heard of it. How do you reconcile what the prosecutors said with what we are doing here? Impeachment was debated off and on in Philadelphia for the entire 4 months, as I said. The key players were Gouverneur Morris, a brilliant Pennsylvanian; George Mason, the only man reputedly to be so brilliant that Thomas Jefferson actually deferred to him—he refused to sign the Constitution, incidentally, even though he was a delegate because they didn't deal with slavery and he was a strict abolitionist. Then there was Charles Pinckney from South Carolina, a youngster at 29 years old; Edmund Randolph from Virginia, who had a big role in the Constitution in the beginning; and then, of course, James Madison, the craftsman. They were all key players in drafting this impeachment provision.

Uppermost in their minds during the entire time they were composing it was that they did not want any kings. They had lived under despots, under kings, and under autocrats, and they didn't want anymore of that. And they succeeded very admirably. We have had 42 Presidents and no kings. But they kept talking about corruption. Maybe that ought to be the reason for impeachment, because they feared some President would corrupt the political process. That is what the debate was about—corrupting the political process and ensconcing one's self through a phony election; maybe that is something close to a king.

They followed the British rule on impeachment, because the British said the House of Commons may impeach and the House of Lords must convict. And every one of the colonies had the same procedure—the House and the Senate. In all fairness, Alexander Hamilton was not very keen on the House participating. But here were the sequence of events in Philadelphia that brought us here today. They started out with maladministration and Madison said, "That is too vague; what does that mean?" So they dropped that. They went from that to corruption, and they dropped that. Then they went to malpractice, and they decided that was not definitive enough. And they went to treason, bribery, and corruption. They decided that still didn't suit them.

Bear in mind one thing: During this entire process, they are narrowing the things you can impeach a President for. They were making it tougher. Madison said, "If we aren't careful, the President will serve at the pleasure of the Senate." And then they went

to treason and bribery. Somebody said that still is not quite enough, so they went to treason and bribery. And George Mason added, "or other high crimes and misdemeanors against the United States." They voted on it, and on September 10 they sent the entire Constitution to a committee they called the Committee on Style and Arrangement, which was the committee that would draft the language in a way that everybody would understand—that is, well crafted from a grammatical standpoint. But that committee, which was dominated by Madison and Hamilton, dropped "against the United States." And the historians will tell you that the reason they did that was because they were redundant, because that committee had no right to change the substance of anything, and they would not have dropped it if they had not felt that it was redundant. Then they put it in for good measure. And we can always be grateful for the two-thirds majority.

This is one of the most important points of this entire presentation. First of all, the term "treason and bribery"—nobody quarrels with that. We are not debating treason and bribery here in this Chamber. We are talking about other high crimes and misdemeanors. And where did "high crimes and misdemeanors" come from? It came from the English law. And they found it in English law under a category which said distinctly "political" offenses against the state.

Let me repeat that. They said "high crimes and misdemeanors" was to be because they took it from English law where they found it in the category that said offenses distinctly "political" against the state.

So, colleagues, please, for just one moment, forget the complexities of the facts and the tortured legalisms—and we have heard them all brilliantly presented on both sides. And I am not getting into that.

But ponder this: If high crimes and misdemeanors was taken from English law by George Madison, which listed high crimes and misdemeanors as "political" offenses against the state, what are we doing here? If, as Hamilton said, it had to be a crime against society or a breach of the public trust, what are we doing here? Even perjury, concealing, or deceiving an unfaithful relationship does not even come close to being an impeachable offense. Nobody has suggested that Bill Clinton committed a political crime against the state.

So, colleagues, if you are to honor the Constitution, you must look at the history of the Constitution and how we got to the impeachment clause. And, if you do that, and you do that honestly, according to the oath you took, you cannot—you can censor Bill Clinton, you can hand him over to the prosecutor for him to be prosecuted, but you cannot convict him. You cannot indulge yourselves the luxury or the right to ignore this history.

There has been a suggestion that a vote to acquit would be something of a breach of faith with those who lie in Flanders field, Anzio, Bunker Hill, Gettysburg, and wherever. I did not hear that. I read about it. But I want to say, and, incidentally, I think it was Chairman HYDE who alluded to this and said those men fought and died for the rule of law.

I can remember a cold November 3 morning in my little hometown of Charleston, AR. I was 18 years old. I had just gotten one semester in at the university when I went into the Marine Corps. So I was to report to Little Rock to be inducted. My, it was cold. The drugstore was the bus stop. I had to be there by 8 o'clock to be sworn in. And I had to catch the bus down at the drugstore at 3 o'clock in the morning. So my mother and father and I got up at 2 o'clock, got dressed, and went down there. I am not sure I can tell you this story. And the bus came over the hill. I was rather frightened anyway about going. I was quite sure I was going to be killed, only slightly less frightened that Betty would find somebody else when I was gone.

The bus came over the schoolhouse hill and my parents started crying. I had never seen my father cry. I knew I was in some difficulty. Now, as a parent, at my age, I know he thought he was giving not his only begotten son, but one of his begotten sons. Can you imagine? You know that scene. It was repeated across this Nation millions of times. Then, happily, I survived that war, saw no combat, was on my way to Japan when it all ended. I had never had a terrible problem with dropping the bomb, though that has been a terrible moral dilemma for me because the estimates were that we would lose as many as a million men in that invasion.

But I came home to a generous government which provided me, under the GI bill, an education in a fairly prestigious law school, which my father could never have afforded. I practiced law in this little town for 18 years, loved every minute of it. But I didn't practice constitutional law. And I knew very little about the Constitution. But when I went into law school, I did study constitutional law, Mr. Chief Justice. It was very arcane to me. And trying to read "The Federalist Papers," de Tocqueville, all of those things that law students are expected to do, that was tough for me, I confess.

So after 18 years of law practice, I jumped up and ran for Governor. I served as Governor for 4 years. I guess I knew what the rule of law was, but I still didn't really have much reverence for the Constitution. I just did not understand any of the things I am discussing and telling you. No. My love for that document came day after day and debate after debate right here in this Chamber.

Some of you read an op-ed piece I did a couple of weeks ago when I said I was perfectly happy for my legacy, that during my 24 years here I never voted for a constitutional amendment. And it isn't that I wouldn't. I think they were mistaken not giving you fellows 4 years.

[Laughter.]

You are about to cause me to rethink that one.

[Laughter.]

The reason I developed this love of it is because I saw Madison's magic working time and time again, keeping bullies from running over weak people, keeping majorities from running over minorities, and I thought about all of the unfettered freedoms we had. The oldest organic law in existence made us the envy of the world.

We have also learned that the rule of law includes Presidential elections. That is a part of the rule of law in this country. We have an event, a quadrennial event, in this country which we call a

Presidential election, and that is the day when we reach across this aisle and hold hands, Democrats and Republicans, and we say, win or lose, we will abide by the decision. It is a solemn event, a Presidential election, and it should not be undone lightly or just because one side has the clout and the other one doesn't.

And if you want to know what men fought for in World War II, for example, in Vietnam, ask Senator INOUYE. He left an arm in Italy. He and I were with the Presidents at Normandy, on the 50th anniversary, but we started off in Anzio. Senator DOMENICI, were you with us? It was one of the most awesome experiences I have ever had in my life. Certified war hero. I think his relatives were in an internment camp. So ask him, what was he fighting for? Or ask BOB KERREY, certified Medal of Honor winner, what was he fighting for? Probably get a quite different answer. Or Senator CHAFEE, one of the finest men ever to grace this body and certified Marine hero of Guadalcanal, ask him. And Senator MCCAIN, a genuine hero, ask him. You don't have to guess; they are with us, and they are living, and they can tell you. And one who is not with us in the Senate anymore, Robert Dole, ask Senator Dole what he was fighting for. Senator Dole had what I thought was a very reasonable solution to this whole thing that would handle it fairly and expeditiously.

The American people are now and for some time have been asking to be allowed a good night's sleep. They are asking for an end to this nightmare. It is a legitimate request. I am not suggesting that you vote for or against the polls. I understand that. Nobody should vote against the polls just to show their mettle and their courage. I have cast plenty of votes against the polls, and it has cost me politically a lot of times. This has been going on for a year, though.

In that same op-ed piece, I talked about meeting Harry Truman my first year as Governor of Arkansas. I spent an hour with him—an indelible experience. People at home kid me about this because I very seldom make a speech that I don't mention this meeting. But I will never forget what he said: "Put your faith in the people. Trust the people. They can handle it." They have shown conclusively time and time again that they can handle it.

Colleagues, this is easily the most important vote you will ever cast. If you have difficulty because of an intense dislike of the President—and that is understandable—rise above it. He is not the issue. He will be gone. You won't. So don't leave a precedent from which we may never recover and almost surely will regret.

If you vote to acquit, Mr. Leader, you know exactly what is going to happen. You are going to go back to your committees. You are going to get on with this legislative agenda. You are going to start dealing with Medicare, Social Security, tax cuts, and all those things which the people of this country have a nonnegotiable demand that you do. If you vote to acquit, you go immediately to the people's agenda. But if you vote to convict, you can't be sure what is going to happen.

James G. Blaine was a Member of the House when Andrew Johnson was tried in 1868, and 20 years later he recanted. He said, "I made a bad mistake." And he said, "As I reflect back on it, all I can think about is that having convicted Andrew Johnson would

have caused much more chaos and confusion in this country than Andrew Johnson could ever conceivably have created."

And so it is with William Jefferson Clinton. If you vote to convict, in my opinion, you are going to be creating more havoc than he could ever possibly create. After all, he has only 2 years left. So don't, for God's sake, heighten the people's alienation, which is at an all-time high, toward their Government. The people have a right, and they are calling on you to rise above politics, rise above partisanship. They are calling on you to do your solemn duty, and I pray you will.

Thank you, Mr. Chief Justice.

The PRESIDING OFFICER. The Chair recognizes the majority leader.

ORDER OF PROCEDURE

Mr. LOTT. Mr. Chief Justice, I believe that concludes the White House presentation. I remind all Senators we will reconvene tomorrow beginning at 1 p.m. On Friday, under the provisions of Senate Resolution 16, we will begin the question-and-answer period for not to exceed 16 hours. The majority will begin the questioning, and as we go forward in that process, we will alternate back and forth across the aisle. I have discussed this proposition, obviously, with Senator DASCHLE, and we have discussed it in our conferences. We looked at a number of alternatives, but we thought this would be a fair way to proceed, that we would begin from this side with a Senator who will be named and go to the other side, back and forth.

We think this provides fairness. I hope all Members will entrust the Chief Justice to be fair during this portion of the deliberations and for the managers and counsel to, of course, be succinct in their answers and respond to the question that is actually asked.

At this time, I anticipate approximately 5 hours of questions and answers being used tomorrow, Friday. We will then reconvene on Saturday at 10 a.m. and again resume questioning, alternating back and forth. We have not set any definite time for Saturday. We will need to see how the questions go. We don't really know whether we will need 5 hours or 10 hours or the full 16. But if we reach a point on Saturday where we need to conclude the day's proceedings and we feel there are still more questions that will need to be asked, then after communication on both sides of the aisle we will decide how to go forward.

It is my hope that we can complete this questioning period during the day Friday and Saturday and conclude it Saturday. I hope the Senators will be thoughtful in their questions. They must be in writing. Please be brief with your written presentation. Dissertations will not be appreciated in writing at this point. We will do our best, Mr. Chief Justice, to deal with the question of repetition or redundancy and try to have some process that Senator DASCHLE and I will use to get the Senators' questions to the Chief Justice.

I thank all Senators for their attention during the past 2 weeks, both in the presentation of the case by the House managers and the presentation by the White House counsel. Obviously, the Senators have been here, attentive. We have listened. I think we have

learned a great deal, and I appreciate the way the Senate has conducted itself.

[The following notice of intent was received on Wednesday, January 20, 1999:]

NOTICE OF INTENT TO SUSPEND THE RULES OF THE SENATE BY SENATORS HARKIN AND WELLSTONE

In accordance to Rule V of the Standing Rules of the Senate, I (for myself and for Mr. Wellstone) hereby give notice in writing that it is my intention to move to suspend the following portions of the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials in regard to debate by Senators on any motion to dismiss, any motion to subpoena witnesses and/or to present any evidence not in the record during the trial of President William Jefferson Clinton:

(1) The phrase "without debate" in Rule VII;

(2) The following portion of Rule XX: ", unless the Senate shall direct the doors to be closed while deliberating upon its decisions. A motion to close the doors may be acted upon without objection, or, if objection is heard, the motion shall be voted on without debate by the yeas and nays, which shall be entered on the record"; and

(3) In Rule XXIV, the phrases "without debate", "except when the doors shall be closed for deliberation, and in that case" and ", to be had without debate".

ADJOURNMENT UNTIL 1 P.M. TOMORROW

Mr. LOTT. I move the Senate stand in adjournment under the previous order.

The motion was agreed to and, at 5:10 p.m., the Senate, sitting as a Court of Impeachment, adjourned until Friday, January 22, 1999, at 1 p.m.

FRIDAY, JANUARY 22, 1999

[From the Congressional Record]

The Senate met at 1:03 p.m. and was called to order by the Chief Justice of the United States.

TRIAL OF WILLIAM JEFFERSON CLINTON, PRESIDENT OF THE UNITED STATES

The CHIEF JUSTICE. The Senate will convene as a Court of Impeachment. The Chaplain will offer a prayer.

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Spirit of the living God, fall afresh on us. We need Your strength. The wells of our own resources run dry. We need Your strength to fill up our diminished reserves—silent strength that flows into us with artesian resourcefulness, quietly filling us with renewed power. You alone can provide strength to think clearly and to decide decisively.

Bless the Senators today as they trust You as Lord in the inner tribunal of their own hearts. You are Sovereign of this land, but You are also Sovereign of the inner person inside each Senator.

May these hours of questions bring exposure of truth and resolution of uncertainties. O God of righteousness and grace, guide this Senate at this decisive hour. You are our Lord and Saviour. Amen.

The CHIEF JUSTICE. Senators may be seated. The Sergeant at Arms will make the proclamation.

The Sergeant at Arms, James W. Ziglar, made proclamation as follows:

Hear ye! Hear ye! Hear ye! All persons are commanded to keep silent, on pain of imprisonment, while the Senate of the United States is sitting for the trial of the articles of impeachment exhibited by the House of Representatives against William Jefferson Clinton, President of the United States.

THE JOURNAL

The CHIEF JUSTICE. If there is no objection, the Journal of proceedings of the trial is approved to date.

Pursuant to the provisions of Senate Resolution 16, the Senate is provided up to 16 hours during which Senators may submit questions in writing directed to either the managers, on the part of the House of Representatives, or counsel for the President. The Chair recognizes the majority leader.

Mr. LOTT. Thank you, Mr. Chief Justice.

ORDER OF PROCEDURE

Mr. LOTT. This afternoon, the Senate will begin the question-and-answer period for not to exceed 16 hours, as provided in Senate Resolution 16. I have consulted several times about this procedure with Senator DASCHLE and others, and we have determined that the majority will begin the questioning process with the first question, and we will then alternate back and forth.

As I noted yesterday, this has not been done in quite a while, so we will just have to go forward in a way that we feel is fair and comfortable. We ask that you give the benefit of the doubt to us in how we send the questions up to the Chief Justice. Senator DASCHLE and I will try to make sure that the time stays pretty close to even as we go through the day. Of course, the Chief Justice, I am sure, will make sure the deliberations and the answers are fair. We hope the answers will be succinct and that they will respond to the questions.

One question that has arisen from Senators on both sides is, can we direct a question to both sides, the White House counsel and the House managers, simultaneously, and the answer is no. Under our rules, we will direct the question to one side or the other, and our questions for either side may go to either one of the parties, but only one can answer that question.

Of course, there is the possibility for a followup question that might be directed to one side or the other. We will just deal with that as we go forward.

I expect, for the information of all Senators, that we will go approximately 5 hours today. I don't know how many questions we can get done in an hour, but I suspect by 6 o'clock on Friday we will have exhausted a series of questions that will entitle us to a break at that point. But, again, we will just have to see how we feel about it. We would not stop, obviously, in the middle of a question.

We will resume again on Saturday at 10 a.m., alternating between both sides. The schedule at this point is undecided. We need to see how many questions are left that Senators really feel need to be asked and, again, we will have to see how the day progresses.

I did have Senators come up to me yesterday and talk to me about we need some reasonable limit on that. But I am thinking in general terms of not going beyond 4 o'clock on Saturday. We will converse and make those announcements after consultation as we go forward today or during the day even tomorrow.

I hope we can complete our questioning period by the close of business tomorrow, but if we go with the times I basically mentioned, we are talking about 10 hours, not 16. So we will have to consult and determine if we ask the basic questions or if we want to continue it later or even over on Monday.

I believe, Mr. Chief Justice, that completes the explanation I wanted to give at this time.

I do have the first question prepared to send to the Chief Justice, but I thought perhaps he has some further business he might want to address before I do that.

The CHIEF JUSTICE. Yes. I would like to advise counsel on both sides that the Chair will operate on a rebuttable presumption that each question can be fully and fairly answered in 5 minutes or less.

[Laughter.]

Mr. LOTT. Mr. Chief Justice, I do send the first question to the desk.

The CHIEF JUSTICE. Senators ALLARD, BUNNING, COVERDELL and CRAIG ask the House managers:

> Is it the opinion of the House Managers that the President's defense team, in the presentation, mischaracterized any factual or legal issue in this case? If so, please explain.

Mr. Manager BRYANT. Mr. Chief Justice, distinguished colleagues, and Members of the Senate, first of all, let me thank you for the opportunity to respond to questions. We hope we can do that in a succinct manner today.

There are a number of mischaracterizations in statements that we disagree with that the President's defense team made. I will not attempt to cover all of these. I would like to highlight just a few of these, and perhaps might, in a short manner, exceed the rebuttal presumption of 5 minutes.

Mr. Craig made the argument on behalf of the President that this is a lot about an oath versus oath perjury case. Article I is the perjury allegation—one word against another person's word, "he said, she said." However, we submit that there was not discussed in their presentation the fact that there is ample corroboration which is provided for under the law as it being necessary.

But we believe factually there was much corroboration; that is, another person or other evidence to support the fact that the President did commit the perjury, and particularly those aspects of the perjury charge that deal with the personal relationship that Ms. Lewinsky and the President had.

Very clearly, White House records and phone logs, along with Ms. Lewinsky's incredible recollection of particular names and

events, and the circumstances surrounding these particular occasions, that have already been highlighted in the past—and we all know about those types of telephone conversations. And she was very clear in the facts. The people have all corroborated her on her presence in the White House at certain times.

No. 2, the Secret Service testimony that placed her inside the Oval Office, on occasion alone; the fact that there have been contemporaneous statements made by Ms. Lewinsky describing the details of this relationship—and as we all know, the law permits this contemporaneous statement—to, in this case, at least eight friends and two professional counselors detailing the particular relationship while it was ongoing.

The blue dress is very clearly corroboration, and the DNA testing that resulted from that. Also, the transfer of Ms. Lewinsky from the White House, and the later surreptitious efforts with Ms. Currie to sneak her back into the White House, again, indication that efforts had been made to move her, to relocate her, away from the President to protect him from those circumstances.

Also, the President's prepared statement in the grand jury is another example that was not mentioned. And in particular, I highlight the statement that he made that would lead you to believe this relationship evolved over a period of time, and being that he was sorry that what had started out as a friendship turned into this type of relationship, where, in fact, Ms. Lewinsky's testimony is very clear that that relationship began immediately, the very first day that he actually spoke to her.

Mr. Ruff's statement that the managers' case was misleading is also incorrect, I believe. He used words like "fudging the facts," "a witches' brew," and "be wary of a prosecutor who feels like he must deceive the court." This comes as somewhat of a surprise to many of us at this table who know that Mr. Ruff is familiar with the facts of this case.

Just last month, when he testified before the Judiciary Committee, he said: I have no doubt that the President walked up to that line that he thought he understood. Reasonable people—reasonable people—and you may have reached that conclusion that he could have crossed over that line and that what for him was truthful but misleading or nonresponsive or misleading and evasive was in fact false.

He didn't tell you in his presentation that just a month ago he took the position that reasonable people can disagree, and yet before this Senate, and the audience that we have watching, he asserts that anyone who would accuse his client of perjury is guilty of "fudging the facts," "brewing a witches' brew," and "deception." And even Mr. Craig, unfortunately, borrowed many of those same words in that characterization. It may be good theater, but it is simply not the case that these managers are engaged in that type of practice before the Senate and the American people.

White House Counsel Cheryl Mills spoke in a similar manner and tone to this House about inconvenient and stubborn facts—oh, those stubborn facts. In her meticulous presentation, she passed over—she completely missed—the second occasion wherein President Clinton attempted to coach Ms. Currie.

Did anyone hear about the second event? As carefully as she tried to make innocent the wrongful effort of the President to tamper with the potential witness, she just as carefully skirted the entire similar episode 2 or 3 days after the first one where he again tampered with her testimony. According to Ms. Currie, spoke with her, just recapitulating. Remember that in our presentation?

Likewise, in her review of witness tampering, she mischaracterized the law stating that an actual threat was required. 18 U.S.C. 1503 states that obstruction of justice occurs when a person corruptly endeavors to influence the testimony of another person. And "corruptly" has been interpreted by the District Court in the District of Columbia to mean acting for an improper purpose.

Clearly, this was an improper purpose when the President was trying to get her to testify falsely, but a threat is not a part of the law and not needed.

I will quickly mention two more.

Mr. Ruff stated the President gave the same denial to his aides that he gave to his country and family. You recall him specifically saying that he said nothing different to the American public and his family than he told the aides whom we talked about—John Podesta, Sidney Blumenthal.

That's not right. "He told"—the President told Mr. Podesta—and this is Mr. Podesta talking—"He told me that he never had sex with her and that he never asked—you know, he repeated the denial. But he was extremely explicit in saying he never had sex with her in any way whatsoever, that they had not had oral sex."

He told Mr. Blumenthal an entirely different story, that "Monica Lewinsky came at me and made a sexual demand on me. [And I, the President,] rebuffed her." He said that "I've gone down that road before [and] . . . caused pain for a lot of people and I'm not going to do that again."

"She threatened him." Ms. Lewinsky threatened the President. And "[s]he said that she would tell [other] people [that she] had an affair, that she was known as a stalker among her peers, and that she hated [that], and if she had an affair . . . [with the President] she wouldn't be . . . anymore."

That is not the story that he told the American people and his family. These are embellishments that are very important because he anticipated that they would go into the grand jury and repeat those misstatements.

And finally, the affidavit of Monica Lewinsky. White House defense lawyers spoke so eloquently about the procurement of this affidavit—as he glided through how the President believed that Monica Lewinsky could have filed a truthful affidavit while still skirting their sexual relationship sufficiently to avoid testifying in the Paula Jones case.

This is an important issue. As it was specifically raised in the answer before this Senate, the President's lawyers brought this statement into this Senate as part of their answer that he could have advised her that she could have filed an affidavit that would have been truthful while still at the same time denying a sexual relationship sufficiently that she would not be called as a witness.

I know opposing counsel makes light of the hairsplitting and the legal gymnastics that people have talked about here, but that is an incredible statement that you can do the twister enough to go into a deposition where the purpose of being there is to discover this type of information, who you might have had an affair with, and have her tell a truthful affidavit and still not to be able to testify.

Had she told a truthful affidavit, she would have been immediately called. Plus, the President was given an opportunity by Ms. Lewinsky to review the affidavit.

Remember the statement that he didn't need to, he had seen 15 just like it? If he had that "out" for her where she could have told the truth and still not been able to testify, don't you think he owed it to her to cause her not to have to commit perjury in that affidavit—which she did—not to have to commit a crime? Wouldn't he have shared that with her if he had that information at that time?

I suggest that he didn't. I have others that I would like to talk to, but in the interest of time and fairness, I will stop my presentation at this point.

I thank the Senate.

Mr. DASCHLE. Mr. Chief Justice.

The CHIEF JUSTICE. I recognize the minority leader.

Mr. DASCHLE. Can I inquire as to the length of time that response took.

The CHIEF JUSTICE. Approximately 9 minutes.

Senator SARBANES asks:

> Would you please comment on any of the legal or factual assertions made by the managers in their response to the previous question from Senators ALLARD, BUNNING, COVERDELL, and CRAIG?

Mr. Counsel RUFF. Thank you, Mr. Chief Justice.

It may be that I will need to call on some of my colleagues to be of assistance here, but let me begin, and we will strive mightily to stay within the rebuttal of 5 minutes.

Mr. Manager BRYANT began by suggesting that there really is corroboration on the key issue that he focussed on, which as you know, is the nature of the specific details of the relationship between the President and Ms. Lewinsky. And he suggested that among the corroborating matters that he would point to were her recollection of events, which is alleged to be detailed; records reflecting that she was, indeed, in the White House on particular days; Secret Service records; DNA testing. None of those have anything to do with the essential issue that Congressman BRYANT raised, because nobody disputes the fact that Ms. Lewinsky was in the White House engaged in inappropriate conduct with the President on a particular day.

The only point that I think the manager raises that is new and needs to be addressed is this notion that contemporary, consistent statements made to third parties about these events are somehow corroborative of Ms. Lewinsky's testimony in this regard. And as all of you who had the pain of suffering through an evidence course will know, or have had the pain of trying lawsuits in which this issue arises, so-called prior consistent statements are not, in fact, viewed as some corroborating evidence that can be introduced by the prosecutors in this Senate; for they know, and I am sure those

of you who suffered through these pangs know, as well, that the law rejects the notion that merely because you tell the same story many times it is corroborative of the underlying credibility of the witness' version, and that there are only certain very limited areas in which prior consistent statements are, in fact, admissible.

A couple of others and I will turn this briefly over to Ms. Mills.

Manager BRYANT suggests that I have somehow gone too far in suggesting that the prosecutors here have, in my words, "engaged in fudging." I have never suggested that the entire presentation is so, and I made very clear in my comments to the Senate the other day the specific examples which I think we documented quite fully. But beyond that, let me go back to his reference to my earlier testimony before the House Judiciary Committee in which I did, indeed, in response to questions, comment that the President may well have walked up to the line believing he didn't cross it, but that reasonable people might conclude otherwise.

The only problem with that example, as broached by Mr. Manager BRYANT, is that I was talking there—and the record is very clear—I was talking about his testimony in the Jones deposition which, as everyone in this room will fully understand, is not before you because the House of Representatives specifically decided that the President's testimony in the Jones deposition was not a basis for impeachment.

With that, without having used, I hope, all of my time, Mr. Chief Justice, I will allow Ms. Mills, if she would, to come forward and respond specifically to the point raised with respect to her presentation.

Ms. Counsel MILLS. Thank you.

I just want to address briefly two issues that the House managers raised. With regard to the statute on obstruction of justice, with respect to witness tampering, the House managers focused on 1512, with respect to Ms. Currie which does require a threat or intimidation and, indeed, specifically addressed that—they wanted to focus on 1512—when they were addressing her and the situation where the President spoke with her.

With regard to 1503, though, to the extent the House managers suggest that the President's actions and his conversation with Ms. Lewinsky violated 1503, I think probably you all might recall from my presentation that we discussed the Aguilar case in which it is clearly necessary that you have a nexus between the actual conduct and the official proceeding that would be going forward. In that case, we had a judge who lied to an FBI agent who indicated that this might come up in a grand jury proceeding, and Mr. Chief Justice, in his opinion, indicated that was insufficient to find the nexus that was necessary to violate 1503.

If you all have my package, you can look back. I provided you with a specific quotation. So in this instance, we clearly wouldn't have the nexus between the President's conversation with Ms. Currie, who was not yet a witness. There was no suggestion that she was going to be a witness in the Jones case; indeed, no one even mentioned that fact to him, as you actually did have in Aguilar.

In addition, with regard to both statutes, the specific intent is not fulfilled. That is something we spoke about when I gave my presentation before.

With regard to the President's conversation with Ms. Currie, which happened on the 18th and again on a subsequent day, in that instance it also happened prior to all of the media attention and other matters that came out. So in effect, all of the same issues apply because there was no—at that point—no indication that the independent counsel was involved in this matter, and the President still was concerned about the Jones proceeding; indeed, he was concerned that the media attention would be significant, and he was accurate as it began to grow and grow.

Thank you.

Mr. LOTT. Mr. Chief Justice, we send our next question to the desk.

The CHIEF JUSTICE. Senators ENZI and COVERDELL ask the House managers:

> Please elaborate on whether the President's defense team failed to respond to any allegations made by the House managers.

Mr. Manager HUTCHINSON. Mr. Chief Justice, ladies and gentlemen of the Senate, as to the areas that were not covered by the President's defense team, I think that my fellow Manager BRYANT already mentioned one, but I thought it was significant that in the questioning of Ms. Currie, or the statements made to Betty Currie after the President's deposition on January 17 where he brought her into the office and he went through that series of questions—"I was never alone, right," and that series of questions everybody is so familiar with, they discussed that primarily in the terms that she was not a witness. But during 3 days of presentation they never discussed the fact that it was 2 days later that the same series of questions or statements or coaching were addressed to Ms. Currie.

So the President's defense that, "Well, I was just trying to refresh my recollection on the facts so I could respond to media inquiries," does not make sense in light of the fact that it was done on one day—the series of questions. But Betty Currie testified that 2 days later she was called into the office, the same series of statements, declarations, coaching was made to her, and the only possible explanation for that is that the President was trying to make a very clear statement to her—"This is what I remember; this is what I want you to do," and for 3 days, for 3 days of presentations, the President's defense lawyers never, never mentioned that.

I want to come back to what Ms. Mills just said because this was a big issue in the presentation of Mr. Ruff. In fact, I have the quotes here. I hope that will be turned over to you. But whenever Betty Currie was questioned, they say, well, she wasn't a witness. There was never any clue she was going to be a witness, that the Jones lawyers never anticipated she was going to be a witness, and that it was never put at all on the witness list. That's very significant.

I just want to drive this point home. This is Mr. Ruff—talk about prosecutorial fudging; how about defense fudging? Mr. Ruff said this:

Ms. Currie was neither an actual nor prospective witness.

In the entire history of the Jones case, Ms. Currie's name had not appeared on any witness list, nor was there any reason to suspect that Ms. Currie would play a role in the Jones case.

Discovery was down to its final days.

That was Counsel Ruff.

Yet, in the days and weeks following the deposition, the Jones lawyers never listed her, never contacted her, never added her to any witness list.

That was the presentation of Mr. Ruff, and it was also that of Ms. Mills. Yet, if you look at the facts in the Jones case, the deposition was concluded on January 17. There was a holiday on the 18th. In fact, on January 22, within 5 days of the deposition, a subpoena was issued for Betty Currie. Within 5 days, a subpoena was issued for Betty Currie, and, in fact, on the 23rd, there was a supplement to the witness list by the Jones lawyers, which included Betty Currie's name as 163. This was served on Mr. Bennett and the other lawyers for the President.

In addition, I have—which I will distribute to you—the actual subpoena that was issued for Betty Currie, as I indicated, on January 22, and the proof of service in which Betty Currie was served as a witness in that case on January 27—the proof of service. So the statements by Mr. Ruff that there was never any indication that the Jones people knew she was going to be a witness is totally not within the record. In fact, it is clear that the subpoena was issued; it was served.

Whenever that deposition of the President was over, both the President left there and the Jones lawyers left there knowing immediately that Betty Currie was going to be a witness. She had to be a witness, with the President asserting, "ask Betty, ask Betty, ask Betty," so many times during that deposition. That is why the President came back and had to deal with Betty Currie being a witness, and the Jones lawyer went out and immediately amended the witness list so as to do that, and then issued a subpoena, which was served on Betty Currie. That is the record. Those are the facts. We will distribute this to you.

The CHIEF JUSTICE. Senator LEVIN asks White House counsel:

Would you please comment on any of the legal or factual assertions made by the managers in their response to the previous question?

Mr. Counsel RUFF. Thank you, Mr. Chief Justice. Let me respond very briefly to Manager HUTCHINSON's last remarks, because I owe him indeed an explanation and he is correct in one respect. I did not accurately reflect the fact that after the January 21 story in the Washington Post, the Jones lawyers did, in fact, attempt to track the entire independent counsel investigation. And I think Mr. HUTCHINSON will tell you, they indeed issued a long list of subpoenas. For that misleading statement, I apologize, and I trust we will hear equally candid assessments from the managers. But more importantly, let me return to the substance of that issue because it is important to note, without the chart being up there, that indeed, at the moment, which is the critical moment, when the President was talking about Betty Currie, whether it be on the 18th or on the 20th or 21st—the 21st, you remember, is when the story breaks. The answer is the same. He had no reason to believe at

that stage—and that is the critical stage because that is what's in his mind and that is what you have to ask if you are talking about obstruction of justice or witness tampering—at that stage, he had no more reason to know that Ms. Currie was going to be a witness than he did, as we explained it, both I and Ms. Mills, in our earlier presentations.

The fact that the Jones lawyers, once this story became a matter of public knowledge, which it did on the 21st, thereafter dumped a series of subpoenas and deposition notices literally in the closing days of discovery does not bear on the question of what was in the President's mind, which is the critical moment for testing his intent, at the moment when he first had his conversations with Betty Currie.

Thank you, Mr. Chief Justice.

The CHIEF JUSTICE. Senators THURMOND, GRASSLEY, CHAFEE and CRAIG direct to the House managers:

> President Clinton has raised concerns about whether the articles of impeachment are overly vague and whether they charge more than one offense in the same article. How do you respond to this concern?

Mr. Manager CANADY. Mr. Chief Justice and Members of the Senate, I will be pleased to do my best to address this question.

The President has made two claims against the forum in which the articles of impeachment have been drafted. I submit to you that neither of these claims has any merit, and I will be pleased to address both claims as briefly as I can.

First, the President claims that the two articles of impeachment are vague and lack specificity and, therefore, prevent him from knowing with what he has been charged.

Second, the President asserts that the articles are flawed because they charge multiple offenses in a single article. With respect to the first claim, it is clear in the President's trial memorandum and his presentation here that President Clinton and his counsel know exactly what he is being charged with. And I submit to you that if President Clinton had suffered from any lack of specificity in the articles, he could have filed a motion for a bill of particulars. He did not choose to do so.

Moreover, articles of impeachment have never been required to be drafted with the specificity of indictments. After all, this proceeding is not a criminal trial. If it were, then we, as the prosecutors, would not only be entitled to call witnesses, but would be required to call them to prove our case. We would certainly not be put in the position of defending the appropriateness of witnesses.

President Clinton wants all the benefits of a criminal trial without bearing any of its burdens. Impeachment is a political and not a criminal proceeding. That has been clear from the institution of this proceeding in our Constitution. As recognized by Justice Joseph Story, the Constitution's greatest interpreter during the 19th century, "Impeachment is designed not to punish an offender by threatening deprivation of his life, liberty, or property, but to secure the State by divesting him of his political capacity." Justice Story thus found the analogy of articles of impeachment to an indictment to be invalid. I quote what Justice Story had to say, which is directly pertinent to this question:

The articles need not and indeed do not pursue the strict form and accuracy of an indictment. They are sometimes quite general in the form of the allegations, but ought to contain certainty as to enable the party to put himself upon the proper defense, and also in the case of acquittal, to avail himself of it as a bar to another impeachment.

Indeed Alexander Hamilton had commented on the same point in "The Federalist." We have heard many references to Federalist No. 65, and in this trial today I will refer once again to what Alexander Hamilton said in "The Federalist" on this particular point. There Alexander Hamilton stated that impeachment proceedings:

. . . can never be tied down by such strict rules, either in the delineation of the offense by the prosecutors, or in the construction of it by the judges, as in common cases served to limit the discretion of courts in favor of personal security.

By that, he means in criminal cases. I think this statement from Alexander Hamilton refutes the argument of the President's counsel directly.

I also point out that unlike the judicial impeachments in the 1980s, President Clinton has not committed a handful of specific misdeeds that can be easily listed in separate articles of impeachment. In order to encompass the whole assortment of misdeeds that caused the House of Representatives to impeach the President, the Judiciary Committee looked to the more analogous case, that of President Nixon. In 1974, in the proceedings with respect to President Nixon, the committee also was faced with drafting articles of impeachment of a reasonable length against a President who had committed a series of improper acts designed to achieve an illicit end.

The first article against President Nixon charged that in order to cover up an unlawful entry into the headquarters of the Democratic National Committee and to delay, impede, and obstruct the consequent investigation and for certain other purposes, he engaged in a series of acts such as "making or causing to be made false or misleading statements to lawfully authorized investigative officers, endeavoring to misuse the Central Intelligence Agency, and endeavoring to cause prospective defendants and individuals, duly tried and convicted, to expect favored treatment and consideration in return for their silence or false testimony.

The articles did not—I repeat "did not"—list each false or misleading statement, did not list each misuse of the CIA, and did not list each respective defendant and what they were promised. That is the record. Anyone who is familiar with the Nixon case—President Nixon case—is familiar with those facts.

In like fashion, the articles of impeachment against President Clinton charged him with providing perjurious, false, and misleading testimony concerning four subjects, such as sexual relations with a subordinate government employee, engaging in a course of conduct designed to prevent, obstruct, impede the administration of justice, which of course included four general acts, such as an effort to secure job assistance for that employee.

I submit to you that an argument can be made that the articles of impeachment against President Clinton were drafted with more specificity than the articles that were drafted against President Nixon.

I will do my best to briefly address the second claim which has been asserted by the President's lawyers against the form of the articles of impeachment; that is, that they are invalid, charging multiple offenses in one article. The articles of impeachment allege that President Clinton made one or more perjurious, false and misleading statements to the grand jury and committed one or more acts in which he obstructed justice.

Once again, these articles are modeled after the articles adopted by the House Committee on the Judiciary against President Nixon and were drafted with the rules of the Senate. Specifically in mind, the Senate rules explicitly contemplate that the House may draft articles of impeachment in this manner and prior rules of the Senate have held that such drafting is not sufficient and will not support a motion to dismiss.

Rule XXIII of the Rules of Procedure and Practice in the Senate When Sitting On Impeachment Trials now states that an article of impeachment "shall not be divisible for the purpose of voting thereon at any time during trial." When the Senate Committee on Rules and Administration amended rule XXIII in 1986, it explained that. And I quote this at length. And this goes right to the heart of the matter. This is what the Rules Committee in its report said. It said:

> The portion of the amendment effectively enjoining the division of an article into separate specifications is proposed to permit the most judicious and efficacious handling of the final question both as a general matter and, in particular, with respect to the form of the articles that proposed the impeachment of President Richard M. Nixon. The latter did not follow the more familiar pattern of embodying an impeachable offense in an individual article but, in respect to the first and second of those articles, set out broadly based charges alleging constitutional improprieties followed by a recital of transactions illustrative or supportive of such charges. The wording of Articles I and II expressly provided that a conviction could be had thereunder if supported by "one or more of the enumerated specifications. . . . [I]t was agreed to write into the proposed rules language which would allow each Senator to vote to convict under either the first or second articles if he were convinced that the person impeached was 'guilty' of one or more of the enumerated specifications."

The Senate rules themselves, thus, specifically contemplate that an article of impeachment may include multiple specifications of impeachable conduct as in the case of President Nixon. The Senate itself has recognized the articles against President Nixon as an appropriate model to be followed. The House has, in the articles now before the Senate, simply followed that model.

Moreover, I point out in conclusion that the Senate has convicted a number of judges on such omnibus articles, including Judges Archibald, Louderback and Claiborne.

I submit to the Members of the Senate that the articles of impeachment against President Clinton present his offenses and their consequences in an appropriately transparent and understandable manner. They are not constitutionally deficient.

Thank you.

The CHIEF JUSTICE. This question is sent by Senators DODD and LEAHY:

> Would you please comment on any of the legal or factual assertions made by the managers in their response to the previous question by Senators Thurmond, Grassley, Chafee, and Craig; particularly what would have stopped or limited the House in specifying precisely the statements on which the articles were based?

Mr. Counsel CRAIG. In our case, we are talking about an allegation of perjury. In the Nixon case—in the 1974 Nixon case—he was not charged with perjury. I think our argument was that perjury is a different kind of thing. You have to be very specific in what you charge, and you have to be very clear as to what the statement is when you are charging perjury. And that is the tradition of our criminal justice system and of our jurisprudence.

The danger here is that if you do not, if you are overly broad, as we contend in article I, that at any given moment you can fill the vessel with what your meaning is.

Let me give you a little history of these allegations of grand jury perjury against the President.

The Starr referral had three allegations. The Starr referral was September 9. Mr. Schippers, when he made his presentation to the Judiciary Committee, had two allegations. One was different. He incorporated one of Starr's. When Starr appeared and testified on November 19 in front of the Judiciary Committee, he almost spent no time on this at all—one or two sentences. But he added a new charge, which was that the President was not truthful when he testified that he had been truthful in the deposition.

Then, we appeared and made our representations and our defense on behalf of the President on the basis of what Mr. Starr had written in his referral and what Mr. Schippers had presented to the Judiciary Committee and in addition to what Mr. Starr had said when he appeared. But then when Mr. Schippers gave his closing argument the following day, we saw the new articles. We had, by my count, 10 allegations from Mr. Schippers. Two had to do with the definition of sexual relations. Three had to do with the prepared statement. Two had to do with things that were never alleged again and never surfaced again in the course of the case. And they had to do with Mr. Bennett and his proffer of the Lewinsky affidavit.

Then, on December 16 we had a whole new additional collection of reports of allegations. And on January 11, the file brief here set forth eight examples.

Just to highlight the danger of not being specific, of not tying yourself to a definition, let me compare, for example, the trial brief that was submitted by the House managers 3 days before Mr. ROGAN made his presentation.

The precise statement that the President is accused of testifying falsely in front of a grand jury was that he was lying when he said that the reason he was seeing Betty Currie was to refresh his recollection. In the trial brief—they make that reference one, two, three, four times—that the statement that is specific here in the trial brief is he lied when he said he was going to refresh his recollection. That is not even mentioned in Mr. ROGAN's presentation. He changes it. And he says he lied when he said he wanted to ascertain what the facts were, trying to ascertain what Betty's perception was—a very different statement requiring a very different defense. And 2 days before, 3 days before we even hear the allegations on the floor of the Senate, we still don't know precisely what they are.

Mr. Counsel RUFF. Mr. Chief Justice, if I may absorb whatever rebuttal time is still available to us, may I for just a moment, sir?

The CHIEF JUSTICE. Sure.

Mr. Counsel RUFF. Thank you.

I want to talk briefly about two aspects of Manager CANADY's presentation.

First of all, he asks why didn't we seek a bill of particulars. Let me remind all the Senators, although I don't think any of you were here at the time of the trial of Judge Louderback who also saw a bill of particulars, and the House of Representatives at the time made it clear that the managers do not have the authority to rewrite the articles, though they certainly have, I suggest, attempted to do so on the fly, but that it would have required a remand to the House of Representatives in order to have a bill of particulars to judge what they themselves meant when they had passed these articles.

Second, just very briefly, I spoke to the issue of multiplicity, duplicity, the other day, and the question of whether the rule XXIII revision makes any difference. As I pointed out—and I won't embarrass him any further—one Member of this body spoke at length about the importance of not loading up multiple offenses into one count well after the revision of rule XXIII, clearly with no sense that this body had been precluded from dealing with the critical issue of whether a two-thirds vote can sensibly be taken on an article that contains multiple and, particularly as my colleague, Mr. Craig, indicated, multiple nonspecific violations.

Thank you, Mr. Chief Justice.

The CHIEF JUSTICE. Senators THOMPSON and GRASSLEY, THURMOND, ALLARD, FRIST, BURNS, and INHOFE direct this question to the President's counsel:

> If the President were a Federal judge accused of committing the same acts of perjury and obstruction of justice and the Senate found sufficient evidence that the acts alleged were committed, should the Senate vote to convict?

Mr. Counsel RUFF. This will sound halfhearted, but it is not. I am glad you asked that question. This really goes right to the heart of the managers' argument here, which is that there is no difference in the consideration of the impeachment process between an allegation against a Federal judge and an allegation against the President of the United States.

I will not repeat the extended discussion of this subject of a few days ago, but let me try to summarize very briefly. It is absolutely crystal clear from the history of the drafting of the impeachment clause that the concern of the framers was, Is there such action as to subvert our Government that we can no longer persist in permitting, in their case, the President of the United States to remain in office? That question must be dramatically different when you ask it about the conduct of 1 of 1,000 judges.

Beyond that, it is also clear that there has been extended debate in many forums and at many times in the past 210 years about, indeed, just what the standard is for the impeachment of judges.

I hesitate to do this, and I do it apologetically, Mr. Chief Justice, but the Chief Justice himself in an earlier time and an earlier guise spoke to this issue and made it clear—this during his tenure as assistant attorney general for the Office of Legal Counsel—when the issue was being debated whether there was a nonconstitu-

tional, nonimpeachment device for disposing of judges alleged to have engaged in misconduct that may not fall within the high crimes and misdemeanors provision of the impeachment clause, that, indeed, the good behavior standard for judges was something far broader than the standard to be applied under the high crimes and misdemeanors standard. And, indeed, that debate was resumed many years later in the context of a further effort to establish a nonconstitutional device for removing judges.

That history, and just the core question, do you ask the same questions about the trauma the Nation suffers when you are removing a judge and you are removing a President, the answer must be no. You must ask, What is the nature of the perjury that has been committed? What is the nature of the offense that has been committed? What is the factual setting in which it occurs? And, ultimately, does it so subvert the accused's ability to perform the duties of his office that you must remove him?

That question for Judge Nixon, convicted and imprisoned, has to be different from—"different" is much too mild a word—stunningly different from the question you ask against the backdrop of our history when you ask whether the President of the United States should be removed and the will of the electorate overturned.

Thank you, Mr. Chief Justice.

The CHIEF JUSTICE. Senators DORGAN and BAUCUS and SCHUMER to the President's counsel:

In Counselor Ruff's presentation, he set forth a time line that undermined the managers' theory that Judge Wright's December 11 discovery letter triggered an intensification of the President's and Jordan's efforts to assist Lewinsky in finding a job. In response to Mr. Ruff's presentation, the managers handed out a press release outside the Senate Chamber asserting that it was the December 5 issuance of the witness list in the Jones case and not the judge's discovery order on the 11th that triggered the intensification of the job search. It does not appear consistent with assertions made by the House managers in their trial brief and oral presentations. Please comment.

Mr. Counsel KENDALL. It was the assertion very clearly voiced in Mr. Manager HUTCHINSON's presentation and very clearly made in the trial brief of the House managers that it was, indeed, the December 11 order that—I used the word "jump-started" yesterday—that catalyzed, that pushed forward, the job search.

If you look at page 21 of the House managers' brief, you see them say this sudden interest was inspired by a court order entered on December 11, 1997. Now, their position could not have been clearer until we began our presentations, and then, all of a sudden, it wasn't the December 11 order; it was, instead, the December 5 witness list.

There are a number of things to be said about that. One of them is that they have very clearly said that there was no urgency at all after the witness list arrived to help Ms. Lewinsky. They have said that Mr. Jordan met with the President on December 5 but that meeting had nothing to do with Ms. Lewinsky. This was in the majority report at page 11. They said that very clearly.

Because it has been clear that the December 11 order was entered at a time when Mr. Jordan was flying to Europe, he could not have known about it. He had met with Ms. Lewinsky earlier that day. And, indeed, that December 11 meeting had sprung from actions taken by Ms. Lewinsky in a phone call with Mr. Jordan in

November. They agreed that when Mr. Jordan returned to the country, they would set up a meeting. They did that on December 5, or she tried to get in touch on December 5. They finally succeeded in getting in touch on December 8, and that was not at a time she knew she was on the witness list.

So the point is these were two entirely separate chains of events going forward—the job search and the witness list. And nothing supports the intensification theory presented by the managers, certainly not this new, "Well, it wasn't the December 11th order; it was the December 5th order."

The CHIEF JUSTICE. Senators ASHCROFT and HATCH—is there anyone on the floor who can't hear me? This is for the House managers:

> The White House makes much of the fact that Vernon Jordan was on a flight to Holland on December 11 before Judge Wright ruled that afternoon that other women who may have had relationships while in President Clinton's employ were relevant to the Jones suit. However, the President was faxed a witness list on December 5 and actually reviewed it no later than the 8th. Thus, isn't the White House argument that the President had no incentive to assist Ms. Lewinsky's job search until December 11 just a red herring?

Mr. Manager HUTCHINSON. Thank you, Mr. Chief Justice. And I appreciate the opportunity to respond here.

Just let me say, by way of preface, that we are lawyers. We are trying to do three things at once. Usually you have an opening statement where you outline where you want to go in a case, then you have a presentation of the evidence, then you have a closing argument. And we are trying to do it all at the same time.

It is for that reason, as I said at the very beginning of my presentation, that you need to pay attention to the record and to the facts. That is what you depend upon. And I get carried away in my argument. I am arguing, just as they are arguing their theory of the case. We are both arguing a point of view here, and it is up to you to make the determination.

I have great respect for these counselors. They are admirable. They are doing a great job for their client, and they are presenting their theory of the case. We are arguing our point of view, and it is the facts that make the determination.

Let me go back to—and you have it in front of you—my presentation, exhibit C, which I guess is the third exhibit, which is really the White House exhibit that Mr. Ruff had up here for a number of days, because they were really trying to hammer home this statement that I made in my presentation. I hope you all have that.

Mr. GRAMM. Just tell us.

Mr. Manager HUTCHINSON. I will tell it to you then. Thank you.

Exhibit C—which I hope you have; we asked them to distribute that—is a statement that Mr. Ruff portrayed, from me, which in my presentation I said: "The judge—the witness list came in, the judge's order came in, that triggered the President into action and the President triggered Vernon Jordan into action."

There are two things that I am pointing to as the trigger mechanisms for the job search intensification. One of them is the witness list that comes in on December 5, that the President knows about,

at the latest, on December 6. The other thing that intensified that effort was the judge's order on December 11.

They went through this long circumstance of Mr. Jordan being in Holland and the time of the phone call with the judge and all of that, showing that the judge's order of December 11 could not have triggered any action on the 11th. There is no question about that. That is obvious from the facts, as it was obvious when I made my presentation. The meetings on the 11th, with Vernon Jordan and Monica Lewinsky, were triggered by the witness list coming on the 5th, that the President knew about on the 6th, that he discussed with Vernon Jordan as well.

We say that the judge's order of the 11th, which was filed that day—the only thing that was filed on the 12th was their memorandum of that telephone conversation—that triggered additional action down the road. The job search was not over; the activity continued into January. And, so, that all put pressure on the ultimate fact, in January when the job was obtained, the false affidavit was filed.

Now let me just point to a couple of other things along that line. We need to look at this because they basically make the point that there is not any connection between the false affidavit—and that is my characterization—that was filed, and the job search. But if you look at the testimony of Vernon Jordan, and that is exhibit—I think they are giving them out now—F, that I am presenting to you, the sworn testimony of Vernon Jordan which was on March 3 of 1998, he testifies in answer to a question:

> Counselor, the lady comes to me with a subpoena in the Paula Jones case that I know, as I have testified here today was about sexual harassment. . . . you didn't have to be an Einstein to know that that was a question that had to be asked by me at that particular time because heretofore this discussion was about a job.

And then he says, "The subpoena changed the circumstances." And I think this is important, that Mr. Jordan, who is filled with common sense, says you don't have to be an Einstein. You don't have to be learned, like Mr. Ruff or any of the other White House counsel, to apply common sense. Common sense tells you that whenever he knew about the subpoena, it escalated to a new arena and obviously the witness list would have the same impact.

And, so, Mr. Jordan himself makes the connection, the job search was one thing but whenever she became a witness in the Jones case, that changed everything. That changed the circumstances. Let me tell you, that is a friend of the President who is making that statement.

We have to take this picture, that they were related as they were going two tracks, they became interconnected and became one track.

The final point—and this was raised on the job search issue—that the call by Mr. Jordan to Mr. Perelman, the CEO of the parent company of Revlon, really had no impact on Monica Lewinsky getting a job because there is a misinterpretation as to how well she did on the interview. But if you look back to the testimony, the grand jury testimony, there was a connection, because Mr. Jordan calls Mr. Perelman and, as he characterized it: Make it happen if it can happen. Mr. Perelman then calls Mr. Durnan, and then Mr.

Durnan calls Ms. Seidman, who was actually doing the interview the next day with Monica Lewinsky.

So the person who was going to make the decision whether to hire Monica Lewinsky got the word down through the channel before that interview took place and before the decision was made. And of course the important thing is: What was the intent? Not the result, but the intent. I think you can see that there was an intent to make sure that Monica Lewinsky was taken care of. Again she was on board, part of the team, before she actually would have to give testimony or the President would have to give testimony.

The CHIEF JUSTICE. This question from Senator BOXER, and it is to counsel for the President:

In light of the concession of Manager HUTCHINSON that Judge Wright's order had no bearing on the "intensity" of the job search, can you comment on the balance of his claim on the previous question?

Mr. Manager HUTCHINSON. Mr. Chief Justice, can I object to the form of the question? That was not properly characterizing what I just stated.

The CHIEF JUSTICE. Can the managers object to a question? [Laughter.]

Mr. Manager HUTCHINSON. I withdraw my objection.

The CHIEF JUSTICE. Very well. The Parliamentarian says they can only object to an answer, not to a question, which is kind of an unusual thing but——

Mr. Counsel RUFF. Mr. Chief Justice, I was going to remark that they can if they have the courage.

I want to link up my response to Manager HUTCHINSON's most recent comments with the previous discussion about vagueness. If there was ever a moving target, we have just seen it in motion: Well, it really wasn't December 11, because now we know it didn't happen on December 11, so let's go to December 19, or maybe January 8, and somewhere in there we are going to find the right answer.

I suggest to you that is reflective of both the difficulty we have had in coming to grips with these charges and, candidly, the difficulty that the House might have had figuring out what those charges really were.

Let me just respond briefly to Mr. Manager HUTCHINSON's argument. And let me focus, first, on another portion of his presentation in which he states, and there—and he is referring now to Ms. Lewinsky—she is referring to a December 6 meeting with the President in which, as you will recall, she has testified that there was a brief discussion about her efforts to get a job through Mr. Jordan and the President sort of vaguely said, "Yes, I'll do something about that." This is Mr. Manager HUTCHINSON's characterization of that moment. December 6, you will recall, is the day after the witness list comes out and the day on which she learns of it:

So you can see from that that it was not a high priority for the President either. It was, "Sure, I'll get to that, I will do that." But then the President's attitude suddenly changed. What started out as a favor for Betty Currie dramatically changed after Ms. Lewinsky became a witness and the judge's order was issued again on December 11.

But to the extent the managers now seek to drag the intensification process back into the December 5 or 6 period, which is when Ms. Lewinsky went onto the witness list, you must look at what they say.

Page 11, majority brief, Mr. Jordan met President Clinton the next day, December 7, but they didn't discuss the job at all. It is absolutely clear that the President knew that Ms. Lewinsky was on the witness list when he met with Mr. Jordan on December 7, and yet the issue of Monica Lewinsky didn't even surface.

I am getting some help here.

"The first"—"the first," their words, page 11, majority brief, majority report—"The first activity calculated to help Ms. Lewinsky actually get a job took place on December 11. There was no urgency."

It is possible, of course, as their trial brief reflects, to bob and weave and dodge around the facts here, but their trial brief says:

> There was obviously—

Referring to the period after she appears on the witness list—

> There was obviously still no urgency to help Ms. Lewinsky.

And even they acknowledge that the December 7 meeting with Mr. Jordan was unrelated to Ms. Lewinsky.

But let me point, because I think this really goes to the heart of it, to what the managers ask you to think about in this context in which now, whether we call it a confession or simply an acknowledgment, what they asked you to do when you heard the recitation about the December 11 events. We now know Mr. Jordan is flying over the Atlantic at the critical moment, and here is what Mr. Manager HUTCHINSON asks you to do with Vernon Jordan, distinguished citizen, distinguished lawyer:

> Now, if we had Mr. Jordan on the witness stand—which I hope to be able to call Mr. Jordan—you would need to probe where his loyalties lie, listen to the tone of his voice, look into his eyes and determine the truthfulness of his statements. You must decide whether he is telling the truth or withholding information.

There is only one message there: Vernon Jordan must have been lying or at least there is enough question about his credibility and his honesty and his decency to explore whether he was lying. If you predicate that question on the, shall we say, erroneous recitation of events on December 11, you need to know nothing more about what the time line and the chronology and the managers' theory of this case is all about.

Thank you, Mr. Chief Justice.

Mr. CHIEF JUSTICE. This question is from Senators SESSIONS, GRAMM of Texas, SMITH of New Hampshire, INHOFE, ALLARD, and ROBERTS. It is directed to the House managers:

> In defense of the President, Ms. Mills has repeatedly stated, and has just reiterated, that the crime of witness tampering requires some element of threat, intimidation or pressure. Isn't it true that section 1512(b) criminalizes anyone who corruptly persuades or engages in misleading conduct with the intent to influence the testimony of any person in an official proceeding? Please explain.

Mr. Manager BARR. Mr. Chief Justice, we appreciate the question from the Senators, since it bears on a number of different

questions and a great deal of the evidence that you all have heard in this case.

One can talk around the law, one can talk about the law, one can ignore the law and, as we have seen, one can break the law, but one has to deal with the law in court and in these proceedings. And that is why throughout these proceedings the Senators have heard us, as the House managers on behalf of the House of Representatives, and as the presenters of this case against the President, refer repeatedly and explicitly to the actual language of the statutes which form the basis for the articles of impeachment against President William Jefferson Clinton.

Counsel Mills has, in fact, misrepresented the law of tampering with witnesses as set forth very explicitly in section 1512 of title 18 of the United States Code. In her arguments 2 days ago, Ms. Mills quite expressly stated that one of the elements that a prosecutor must charge and that must be found here, if, indeed, article II, which is obstruction of justice, should lie as the basis for a conviction thereon, one must find that tampering under 1512 requires threats or coercion. Nothing could be further from the truth.

Now, if, in fact, Ms. Mills had stated to this body that one of the bases, one of several bases on which a prosecutor or we, as House managers, could, indeed, show this body that tampering with a witness would lie, includes, as an alternative, as an option, threats or coercion, she would have, instead of being misleading, been absolutely correct. That was not her position.

Section 1512 of the United States Code expressly does not require threats of force, intimidation or coercion. It may be based on the person corruptly persuading another person or engaging in misleading conduct toward another person, both of which are terms, the definitions for which are not found in the ether, but are found, yet further reading, in title 18. Neither of them requires threats, intimidation or coercion.

Moreover, in considering whether or not section 1512 or, indeed, its companion section, 1503, also obstruction of justice under the U.S. Criminal Code, which also does not require for a conviction to lie thereon threats of force, intimidation or coercion, but also may be and is based on corruptly influencing, those terms are expressly defined and dealt with not only in the definitional provisions of title 18, and including specifically definitions that apply to these provisions, these sections, but also in the case law.

We respectfully direct the attention of the Senators in reviewing the law of obstruction of justice and the law of tampering with witnesses to some of the very cases cited by the attorneys for the President in their effort to deflect attention away from these particular provisions of the law as they apply to the conduct of the President.

For example, in her presentation, Presidential Counsel Mills relied on the Supreme Court case of United States v. Aguilar in her statements. In that case, the Court held that a lie told to a criminal investigator was insufficient to prove witness tampering.

What Ms. Mills failed to disclose, however, was that the Court's decision in that case, in that Aguilar case, was based on a specific finding not applicable to the facts of this case that the evidence was insufficient to prove that the defendant could have even

thought that the investigator was a potential witness at the time that he lied to him.

The overwhelming body of evidence in this case, as we have heard yet this morning, most recently in response to questions, is that not only could the President, and the President did in fact reasonably presume, indeed almost invite, the lawyers in the Jones case to subpoena Ms. Currie as a witness, but we have found, contrary to the prior misleading statements of Counsel Ruff, she was, in fact, subpoenaed and called as a witness.

Therefore, we believe that on both arguments raised by counsel for the President seeking to deflect attention away from and render inapplicable both obstruction provisions, 1503 and 1512, because they, one, require—as we have shown they do not—but they would argue they require coercion, threats, intimidation or force or, two, they are inapplicable because the President could not have reasonably believed or did not know that Ms. Currie was a witness, could reasonably be expected to be a witness at the time the coercion took place.

I yield for 1 minute to House Manager GRAHAM.

The CHIEF JUSTICE. I believe the House managers' time has expired.

Mr. Manager BARR. I will not yield to House Manager GRAHAM.

The CHIEF JUSTICE. Senator BYRD, to the President's counsel:

Alexander Hamilton, in Federalist essay No. 65, states that "The subjects of impeachment are "those offenses which proceed from the misconduct of public men, or, in other words, from the abuse or violation of some public trust." Putting aside the specific legal questions concerning perjury and obstruction of justice, how does the President defend against the charge that, by giving false and misleading statements under oath, such "misconduct" abused or violated "some public trust"?

Mr. Counsel RUFF. Mr. Chief Justice, this, too, goes to the very heart of the deliberations in which you must engage at the end of these proceedings. As I have tried to make clear in my earlier arguments, it is not enough simply, I think, to ask does a particular generic form of misconduct, however serious it may be, lead inexorably to the conclusion that the President of the United States has committed an impeachable offense?

As the framers made clear, and I think the history that lay behind their deliberations and the history that has followed make clear, when we speak of the kind of political—in caps, which is what it was in Federalist 65—offenses against the man in his public role, we speak of offenses which this body must ultimately judge as being so violative of his public responsibilities that our system cannot abide his continuing in office.

Let us assume for a moment—and we will disagree with each and every element of the accusation—but let us assume for a moment that this body were to conclude that the President lied in the grand jury about his relationship with Ms. Lewinsky. That in and of itself does not lead to the judgment, and in our view must not lead to the judgment, that he needs to be removed from office. It must give you pause. You must think carefully about it.

But ultimately you must ask, despite our rejection of any such conduct—whether it be a judge or a President or any other civil officer—have the framers instructed us to remove from his office, and overturn the will of the electorate, a President who, admittedly, if

you conclude that he did violate the law in this regard, has violated a public trust in the broadest sense, as each of us does who serves the public, if we do anything other than that which are our properly assigned responsibilities, and do them with the utmost of integrity? Each of us violates that trust if we don't meet that standard.

But the one thing we can be certain of is that the framers understood the frailties with which they were dealing. They understood the nature of the offense that had been the background of impeachment proceedings in England. And certainly the framers, in their debate, made it clear that it has to be at the highest level of public trust—the breach of the public trust that is embodied in the words "treason," "bribery," "selling your office" and similar other high crimes and misdemeanors.

And so all I ask the Senators in this regard is not to simply leap, as the managers would have you do it, from the definition of the offense or the statute governing their conduct, but to ask the constitutional question, as I know you will, the framers' question. If we have not convinced you on the facts, I hope we will convince you that the framers would have asked: Is our system so endangered that we must not only turn the President over to the same rule of law that any other citizen would be put under, after he leaves office, but must we cut short his term and overturn the will of the Nation? And in our view, in the worst case scenario, you can find the answer to that question must still be no.

Thank you, Mr. Chief Justice.

The CHIEF JUSTICE. Senator LOTT asks the House managers:

Do the managers wish to respond to the answer just given by the President's counsel?

Mr. Manager CANADY. Mr. Chief Justice, Members of the Senate, we will briefly respond to the response just given by counsel for the President. We believe that the response and the position taken by the counsel for the President here really involves two great errors. One error is in establishing a standard of conduct for the Presidency that is too low. The other error is in attempting to minimize the significance of the offenses that this President has been charged with and which we submit to you the evidence supports the charges.

Now, we do not submit that any President—this President, whoever it may be—should be impeached and removed from office for trivial or insubstantial offenses. We believe that an essential part of the focus of your inquiry must be on whether there was a serious, corrupt intent involved in the underlying conduct.

A President should not be impeached and removed from office for a mistake of judgment. He should not be impeached and removed for a momentary lapse. Instead, he should be impeached and removed if he engages in a conscious and deliberate and settled choice to do wrong, a conscious and deliberate and settled choice to violate the laws of this land.

We submit that he must be impeached and removed if he does that, because in doing so he has violated his oath of office and in doing so he has turned away from the unique role which he has under our Constitution, as the Chief Executive, charged with en-

suring that the laws be faithfully executed. He steps aside from that role and takes on the role of one who attacks the rule of law. And it is for that reason that we believe this President should be removed. And we further submit the attempt to minimize the significance of the conduct of this President does a disservice to the laws of this land.

The attempt to minimize this course of conduct, which started out as an effort to deprive a plaintiff in a civil rights case of her just day in court, is a serious course of conduct, a course of conduct which brings disrespect on the Office of the Presidency and, indeed, undermines the integrity of the Office of the Presidency, the integrity of the judicial system. And it is for all of those reasons that we submit to you the President's counsels' efforts to persuade you that this course of conduct is not impeachable are not persuasive and should not be accepted by the Senate in this case.

The CHIEF JUSTICE. Senators TORRICELLI and ROCKEFELLER ask, to the President's counsel:

> The House managers have made the overly broad argument that "[n]othing in the text, structure, or history of the Constitution suggests officials are subject to impeachment only for official conduct." Can this unbending argument be reconciled with the following statement from Justice James Wilson: "Our President . . . is amenable to [the laws] in his private character as a citizen, and in his public character by impeachment"—and with the standard adopted by a bipartisan majority in the Watergate proceedings?

Mr. Counsel RUFF. Mr. Chief Justice, Senators, I could probably simply say no, given the articulate framing of that question, and I would have said as much as needed to be said.

I think the managers have, in their strawman-building role, tried to suggest that our position somehow is so distant from constitutional realities and the realities of the operations of our Government that we could not conceive of a situation in which private conduct, no matter how egregious, would lead to removal. Of course, that is not the case. None of us could contemplate a setting in which even personal conduct—and I need not go through any examples—was so egregious that the people simply could not contemplate the notion of a President remaining in office.

But other than that, if there is one message that comes out, not only of Judge Wilson but of the entire debate of 1787 and all of the commentary since then, it is that, indeed, the focus of attention must be—and this goes back to, in large measure to Senator BYRD's question—must be on the public character of the man; the political, in a broader sense, character of the man; and of his acts.

And if you look back at the 1974 writings of the House Judiciary Committee, both majority and minority, this is not a partisan view. They make it absolutely clear that the House then believed something which they must either not believe today or have ignored as they engaged in their discussions, which is that the test to be applied is whether the President in this case has so abused the public trust, so abused the powers of his office, that he goes to the very heart of what the framers had in mind in 1787 when they carefully confined and carefully limited the range of activity that could lead to contemplation of removal, and that is not a range of activity that, with all due respect, touches anywhere near the conduct that you have before you today.

The CHIEF JUSTICE. Senator NICKLES asks the House managers:

President's counsel stated the President did not commit perjury. Please respond.

Mr. Manager ROGAN. Mr. Chief Justice, I trust that the presumption of 5 minutes is a rebuttable one, correct? I will do my best not to have to go beyond the time. I thank the Senator for the question.

First, just as a predicate, obviously in 5 minutes I could not do a comprehensive review on the perjury aspects of this case, so let me just start with a preliminary issue and we can move on with different questions and revisit the issue at another time. If anybody wants a lesson in legal schizophrenia, please read the President's trial brief on this very subject. They skirt the issue by saying nowhere in the President's grand jury deposition did he ever affirm the truth of his civil deposition testimony. But they won't come out and say he lied, they won't come out and say he perjured himself, and they try to ignore the actual fact of when the President was asked questions about his oath that he took during the grand jury.

I read, therefrom:

Question to the President:

You understand the oath required you to give the whole truth that is a complete answer to each question, sir.

Answer: I will answer each question as accurately and fully as I can.

Question to the President:

Now, you took the same oath to tell the truth, the whole truth, and nothing but the truth, on January 17, 1998, in a deposition in the Paula Jones litigation, is that correct, sir?

Answer: I did take an oath there.

Question: Did the oath you took on that occasion mean the same to you then as it does today?

Answer: I believed then that I had to answer the questions truthfully, that's correct.

The colloquy goes on. It is in your materials.

They attempt to say that that somehow inoculates the President from having to admit that he perjured himself during the Paula Jones deposition.

But let's take a quick look at some of the answers he gave during the Paula Jones deposition that he affirmed in his grand jury testimony that we now know is false.

Question to the President:

If she [Monica Lewinsky] told someone she had a sexual affair with you beginning in November 1995, would that be a lie?

Answer: It certainly would not be the truth.

Question: I think I used the term "sexual affair;" and so the record is completely clear, have you ever had sexual relations with Monica Lewinsky as that term is defined in deposition exhibit No. 1?

Answer: I have never had sexual relations with Monica Lewinsky. I've never had an affair with her.

Then they go on to ask:

Is it true that when Monica Lewinsky worked at the White House, she met with you several times?

Answer: I don't know about "several times." There was a period when the Republican Congress shut the government down. The whole White House staff was being run by interns. She was assigned to work back in the Chief of Staff's Office. We

were all working there. I saw her on two or three occasions then. And then when she worked at the White House I think there were one or two times when she brought some documents down to me.

Question: At any time were you and Monica Lewinsky in the hallway between the oval office and the kitchen area?

Answer: I don't believe so unless we were walking back to the dining room with pizzas. I just don't remember. I don't believe we were in the hallway, no.

This colloquy goes on and on. I invite the Senate to review the President's deposition testimony.

He clearly was giving answers that were false. They were not part of the record. He wasn't doing it to protect himself from embarrassment; he was doing it to defeat Paula Jones' sexual harassment case. When the President testified in August before the grand jury, he never denied the truth of those testimonies. He refused to admit he lied during the deposition. He reiterated the truth of those because he knew he would be subject to perjury.

The question for the President's counsel is this, and it is a simple question: Did the President lie under oath on January 17 when he was asked questions about the nature of his relationship with Monica Lewinsky? Did he lie when the U.S. Supreme Court had said Paula Jones had a right to proceed in a sexual harassment case? Did he lie when Judge Susan Webber Wright ordered him to answer those basic questions under oath? And if the answer to that question is yes, then we have an incredible admission; if the answer is no, I invite them to point to the record where that is demonstrated.

The CHIEF JUSTICE. To the President's counsel from Senators CONRAD and TORRICELLI:

The House of Representatives rejected two proposed articles of impeachment, including an article of alleged perjury in the Jones deposition. Do you believe that the Senate may, consistent with its constitutional role, convict and remove the President based on the allegations under the rejected articles, including the allegations of perjury?

Mr. Counsel CRAIG. Mr. Chief Justice, article II was defeated. But more importantly, article I specifically incorporates by reference, or tries to incorporate by reference, all the elements of article II. And the House of Representatives, when they voted to reject article II, I think, voted also to eliminate these issues about which you have just heard.

We predicted—and our prediction has come true—that the managers would like to argue this case. If you look at the majority point that comes out before the vote occurs on all four articles and you go to article I and try to find out where in article I they define those perjurious statements that compose subpart (2), the civil deposition, you will see in the majority report they say go look at article II—which is the argument about the civil deposition—and the House of Representatives specifically voted to take out all those accusations and allegations of misconduct with respect to the civil deposition.

I have testified, as did Mr. Ruff, before the Judiciary Committee on this issue. I said that the President's responses in the Jones deposition were surely evasive, that they surely were incomplete, that they surely were intended to mislead; and it was wrong for him to do all that. But they were not perjurious.

If you want to try a perjury case about all of the things and the statements that the House of Representatives did not want to accuse him of, that would be inconsistent, I think, with your duty as members of this court. You cannot impeach the President on the issues that are included in article II. He was not impeached; you cannot remove.

Mr. LOTT. Mr. Chief Justice, I believe we have had an equal number of questions, although the timing may not be exactly equal.

I ask unanimous consent that we take a 15-minute recess at this point.

There being no objection, at 2:41 p.m., the Senate recessed until 3:01 p.m.; whereupon the Senate reassembled when called to order by the Chief Justice.

The CHIEF JUSTICE. The Chair recognizes the majority leader.

Mr. LOTT. Mr. Chief Justice, I believe we are ready to resume the questions, and I believe this will be question No. 16. We send the question to the Chief Justice.

The CHIEF JUSTICE. This is a question from Senators SANTORUM, SMITH of Oregon, and THOMAS to the House managers:

> Please respond to the presentation made by counsel to the President, including the argument made by Mr. Craig, to the effect that the rejection of article II had the effect of eliminating that portion of article I. Did the House conclude that lying in a civil deposition is not impeachable, but that lying to the grand jury about whether the witness lied in a civil deposition is impeachable?

Mr. Manager ROGAN. Mr. Chief Justice, I thank the Senators for the question and for the opportunity to rebut the presentation a few minutes ago by counsel for the President, Mr. Craig.

In his response he asks the Senate to do specifically what none of the attorneys can do in their presentations, and that is go beyond the record. Specifically, Mr. Craig is asking the Senate to make assumptions as to why the House of Representatives defeated what was then known as article II, a stand-alone article of impeachment that the President lied during the civil deposition. And he goes so far in his presentation to say because the House of Representatives defeated what was then article II, the Senate should not consider any of the language relating to the President's perjury during the civil deposition.

First, I ask the Senate not to make those assumptions because if there was any reasonable inference to be drawn, it would be that it was cumulative. Why is it cumulative? Why did the House not want this to be a stand-alone article? It is cumulative because, if Mr. Craig would read article I, he would see that one of the allegations of perjury is that the President committed perjury in the grand jury when he referenced his civil deposition answers and reiterated those to the grand jury. And so the House made a decision not to use a separate stand-alone article. But I respectfully submit to this body that that is the only inference that can be drawn.

The other thing I want to mention briefly about Mr. Craig's presentation on that issue is what I found to be a startling admission on his part. Assuming, of course, that the Senate is going to look at article I as it was drafted and passed by the House and is presented to you dealing with civil deposition perjury, Mr. Craig said that the President's testimony in the Jones case was evasive and incomplete.

He goes even further in his testimony, or statement to the Senate a couple days ago, and I am quoting. He said, "The President's testimony in the Jones case, the President was evasive, misleading, incomplete in his answers."

That begs the question. What kind of oath did the President take in the civil deposition? Did he take an oath, did he raise his hand and swear to tell the truth, the evasive truth, and nothing but the evasive truth? Did he take an oath to tell the truth, the misleading truth, and nothing but the misleading truth? Did he take an oath to tell the truth, the incomplete truth, and nothing but the incomplete truth? Because, if he did, if that was the language that the President used when he took his oath and testified, then perhaps Mr. Craig's position is well taken. But a brief review of the oath that the President took clearly states that he took an oath and was obliged under the law to tell the truth, the whole truth, and nothing but the truth—not the incomplete or misleading truth, the truth, the whole truth, and nothing but the truth.

And so this body has to make a determination when they review that testimony, both given during the civil deposition and reiterated during the grand jury, whether the President fulfilled his legal obligation in a sexual harassment lawsuit. And if he did, then clearly that should be stricken, and you should not consider that. But if he did not, if you find that in fact he testified, as Mr. Craig says he testified, incompletely, evasively, and misleadingly, then I believe this body has an obligation to cast a vote accordingly.

The CHIEF JUSTICE. Senator REED of Rhode Island asks the White House counsel:

> Would you please comment on any of the legal or factual assertions made by the managers in their response to the previous question.

Mr. Counsel RUFF. I thank you, Mr. Chief Justice.

Mr. Manager ROGAN asked you not to make assumptions about what the actions of the House mean, and then proceeded to make a series of assumptions about what the House might have meant.

The problem with Mr. Manager ROGAN's analysis is twofold: One, he and his colleagues in the House on the Judiciary Committee drafted these four articles. They believed, at least 20 of the majority believed, that it should be an impeachable offense, as he now puts it: did the President fulfill his obligation in the Jones deposition? You don't need to make a lot of assumptions to understand merely on the face of the action that was taken that the full House said, no, it is not, even if we were to conclude, as the House Judiciary majority wishes us to conclude, an impeachable offense.

And so the managers have had to find a way to drag back into article I all of the problems that they see in the President's testimony in the Jones deposition. The problem is that—and you can listen to it in the language that Mr. Manager ROGAN has used not only today but earlier and that is used in the brief filed by the House managers—that the President, in his words, referenced and reiterated his testimony in the Jones case. Senators, that is not so.

They try to hook onto a statement, as best we are able to tell in searching their position and their writings on the subject, the managers hook onto a statement in which the President said, I tried to walk through the minefield of the Jones deposition without vio-

lating the law and think I did. And, on that frail hook—which is clearly a statement of the President's state of mind about whether he succeeded or didn't succeed in testifying without violating the law in the Jones case—on that hook they hang every single item. They didn't tell us what they were—but they hang every single item that the House rejected out of hand in article II.

Wholly apart from the inadequacy of the predicate that they lay, if there was ever an example of a situation that Mr. Craig talked about earlier and that I talked about on Tuesday, in which I challenge anybody in this room to tell me how you would have known coming into this Chamber what it was that the managers were alleging with respect to the Jones deposition, this is it.

Look at the trial brief. If you look at Manager ROGAN's presentation of the other day, if you listened to his presentation today, where, amongst all that, do we pick and choose to find the statements? Even if you agree with Mr. Manager CANADY that it is all right just to sort of generally charge, as a constitutional proposition—and I firmly disagree with that. I don't care under what level you are operating—the lowest trial court in the country—nobody would ever say: Now, Mr. Defendant, I want you to understand that you are being charged with what you'll find at page, whatever it is, of the majority report where we refer you over to this list of other things that was rejected by—just let us say the grand jury—and somewhere in there you are going to find the charges to which we ask you to respond.

The bottom line is, you can go down that list. Some of them you will never hear mentioned in this Chamber—haven't heard them mentioned yet. I defy anybody in this Chamber, including the managers, to justify asking the President of the United States to defend against a reference from one page of a brief to another in order to tell the charges of which he stands accused.

If you read his grand jury testimony, you see he addressed a number of issues that he addressed in the Jones deposition. He clarified. He elaborated. He told the truth in the grand jury. Not once was he ever asked by the independent counsel and all his lawyers there who had been pursuing this investigation for 7 months when they had him in the grand jury—not once did they ask him this simple question: Is everything you testified to in the Jones deposition true? Or, go down the list and say: Is what you testified to on page 6, or page 8, or page 87 true?

And when they got through with that deposition, 4 hours, professional prosecutors, and they went back and spent from August 18 to September 9, when they sent their referral up, looking back, using a fine-tooth comb on that transcript, and they went back and said—where are the violations? Even they don't say that there is some sort of wholesale importation of the Jones deposition into the grand jury. And, yet, not the House but the Judiciary Committee majority report and the managers, with that big, vacant, empty spot in the middle, the rejection of article II by the House of Representatives, would have you believe that, indeed, what the independent counsel's office didn't believe happened and didn't force to make happen, did happen. And they are asking you to remove the President from office on that kind of logic.

Thank you, Mr. Chief Justice.

The CHIEF JUSTICE. This is from Senators SHELBY and SNOWE to the House managers.

There has been much debate regarding the nature of the offenses that fit within the definition of "high crimes and misdemeanors." When employing this phrase in the Constitution, the framers relied on precedents supplied by Colonial and English common law to provide context and meaning. Please explain whether or not the offenses charged in the two Articles fit within the types of impeachable offenses contemplated by the framers as they interpreted Colonial and English common law precedent.

Mr. Manager CANADY. Mr. Chief Justice and Members of the Senate, I will be happy to respond to this question because it is a question that goes to the heart of the matter that is before us.

On Saturday I made a presentation which focused on the history of the impeachment process in Great Britain and the way in which that serves as a backdrop for the work of the framers. I would like to refer you, again, to a document to which I made reference during the course of the proceedings on Saturday. This is a document which has also been referred to repeatedly by counsel for the President. It is the report prepared by the staff of the impeachment inquiry in the case of President Nixon entitled "Constitutional Grounds for Presidential Impeachment."

I believe that in that report they grapple with the very issue that you have now raised. And in characterizing the background of impeachment and characterizing the things that the framers focused on both in the course of the Constitutional Convention and in the ratification debates and also—it goes a little beyond your question—the course of impeachment proceedings over the last 200 years in the House of Representatives and in the Senate, they came to this conclusion, and this is what they said. They said:

The emphasis has been on the significant effects of the conduct—undermining the integrity of office, disregard of constitutional duties and oath of office, arrogation of power, abuse of the governmental process, adverse impact on the system of government.

They went on to say:

Impeachment was evolved by Parliament to cope with both the inadequacy of criminal standards"—and one of the issues that they were concerned with was whether there had to be a criminal violation in order for there to be a high crime or misdemeanor, and they concluded, I believe rightly, that there need not be a criminal offense, but they said, "Impeachment was evolved by Parliament to cope with both the inadequacy of criminal standards and the impotence of courts to deal with the conduct of great public figures.

They concluded, then, by saying:

Because impeachment of a President is a grave step for the nation—which all of us in this Chamber concede—it is to be predicated only upon conduct seriously incompatible with either the constitutional form and principles of our government or the proper performance of constitutional duties of the Presidential office.

That is the standard which they set forth, which I believe encapsulates the whole history of the experience of the English Parliament, as well as the discussions in the Constitutional Convention and the ratification debates as well as anything I have seen.

Let me point out that this was a product of the staff of the Rodino committee. This is not something that the House managers here today have come up with to support our case; it is there as part of the record.

Let me refer to another part of that particular report, which I think gets to the essence of the matter here. They said, "Each of the thirteen American impeachments"—of course, there have been more impeachments since the time this was written—"involved charges of misconduct incompatible with the official position of the officeholder. This conduct falls into three broad categories."

I think that this is a very sensible division of the types of conduct that may fall—the types of conduct that constitute high crimes and misdemeanors.

(1) exceeding the constitutional bounds of the powers of the office in derogation of the powers of another branch of government; (2) behaving in a manner grossly incompatible with the proper function and purpose of the office; and (3) employing the power of the office for an improper purpose or for personal gain.

I submit to you, in conclusion, that what we have before the Senate in this case is conduct that clearly falls within the scope of category 2, which I just read, which I will repeat—"behaving in a manner grossly incompatible with the proper function and purpose of the office"—for the very reasons I explained a few moments ago. When the President of the United States, who has taken an oath of office to support and defend the Constitution, who has a constitutional duty to take care that the laws be faithfully executed, engages in a calculated course of criminal conduct, he has, in the most direct, immediate, and culpable manner, violated his oath of office, breached his duty under the Constitution, and for that reason has behaved in a way that is grossly incompatible with the proper function and role of the high office to which he has been entrusted—which has been entrusted to him by the people of the United States.

The CHIEF JUSTICE. This question from Senator BINGAMAN to White House counsel:

Would you please comment on any of the legal or factual assertions made by the Managers in their response to the previous question?

Mr. Counsel RUFF. Mr. Chief Justice, Senators, let me make a couple of points, if I might. The question that was put to the managers started by asking what we can learn from looking back into English roots of impeachment and how that might bear on the decisions that you face in the coming days.

I will not, in any sense, hold myself out as a scholar or at least enough of one to be able to answer the question with any specificity, but I do know enough about the parliamentary form of government and its experience with impeachment to know that a couple of lessons can be drawn from it.

First, that impeachment was a developing tool over the course of the 14th, 15th, 16th and 17th centuries as a weapon in the battle between the Parliament and the Crown. It was one of the ways—indeed, one of the very few ways—the Parliament could reach out and remove the King's ministers or the Queen's ministers, and that was really where the battleground was.

Even in that setting, when it was an avowed political tool, history, I think, will tell us that Parliament did ask itself, Was the conduct of the minister at issue—whoever that minister might be—so subversive of the constitutional form of government that removal

of the minister, or in some cases even more severe sanctions, was necessary?

If you transport that into the experience of the framers, it does two things, I believe: One, it tells you what the framers knew of the seriousness of the offenses that had to be addressed through impeachment and what the need for impeachment was as the ultimate solution to the ultimate problem.

But it also tells you very clearly that the framers did not want to bring that English experience in wholesale because they recognized it for what it was, which was, indeed, a weapon in the battle between the Parliament and the Crown, and the government that they had created needed balance among the legislature and the executive and the judicial branch. The use of impeachment, as it was reflected over the four or five centuries that had been developed, was not consistent with what these framers were creating. And so they very carefully chose, and the debates reflect that, to limit the scope of impeachment and to use it as they viewed it: only as a matter of constitutional last resort.

In doing so, they foretold, I think, the positions staked out both by the majority and the minority at the time of Watergate. And let me pause here just for a moment to say that I will not go into detail respecting the conduct engaged in by former President Nixon, except to say and suggest to you that it is so far distant from anything that has been charged here that it doesn't belong in the same sentence, paragraph, or certainly article.

But if you look at what came out of the House Judiciary Committee in 1974, I agree entirely with the theme of the majority staff report at the time, as did the minority. Their theme was the theme that I hope I have sounded, probably too often, over the last few days. And I am going to read to you again—I apologize to you—something I read to you earlier, which is the minority view on the meaning of impeachment:

> It is our judgment, based upon this constitutional history, that the framers of the United States Constitution intended that the President should be removable but by the legislative branch only for serious misconduct dangerous to the system of Government established by this Constitution. Absent the element of danger to the State, we believe the delegates to the Federal Convention of 1787—

I will skip over a little language here—

> struck the balance in favor of stability in the executive branch.

Thank you, Mr. Chief Justice.

The CHIEF JUSTICE. Senators GRASSLEY, SMITH of New Hampshire, BUNNING and CRAIG ask the House managers:

> In your presentation, you made the case that the Senate should call witnesses. In light of the White House's response to this argument, do you still hold this position? Please elaborate.

Mr. Manager MCCOLLUM. Mr. Chief Justice and Senators, the House definitely holds to the position that we should call witnesses. But I think the issue here is what has been related to us in anything we have heard in the past few days by the White House counsel that would say we don't need them, or I think just the contrary, what have we heard that says we are more likely to need them, or you are more likely to need them. First of all, I would like

to point out to you that the White House counsel is trying to have it both ways.

They have been arguing to you on a lot of technicalities of the law, the criminal law, for the last few days, and that is understandable.

As I said to you a few days ago, I think this is a two-stage process. We, the managers, do. You have to determine if the President committed crimes, and if he did, should he be removed from office: two separate questions. They have argued to you that you should use the standard, beyond a reasonable doubt, which is a criminal standard, and I might add that standard is only for facts, it is not for whether you remove; it isn't to determine law.

You wear the hat as finders of fact as well as the judges, finders of the law, and so forth. But if you choose to use that standard, you need to know that it doesn't mean it excludes any doubt. You probably need to hear a jury instruction, which we can provide at some reasonable point for you, about how a Federal court would charge a jury about that.

The point I am making is that they have claimed that, and they claim there is a lack of specificity in the charges. We are not in court in the sense of a real trial here. We don't have to be specific like that. The whole history of the articles of impeachment that have come over here in the past on judges have never gotten down into the technical specificity of a courtroom and been thrown out because they were not exactly right.

My point is they have built up a whole case about we ought to follow these rules and have a criminal proceeding and judge the crimes on that basis, and yet they have said you wouldn't have witnesses or we shouldn't call witnesses.

In any criminal trial, you are going to call witnesses; you need to judge their credibility. I want to walk through what else they have said to you in the last couple of days that makes that point very clear with regard to testimony, with regard to judging who you believe or who you don't believe and how important that is.

First of all, let's just take a few glimpses, but as we do this, remember the big picture is the scheme the President has engaged in. The whole basis for our discussion today in each of these two articles of impeachment involves the questions of the President trying to thwart the Jones court will, trying to hide evidence from the court and planning not to tell the truth in that deposition in January. Whether that is over here on a perjury count or not is irrelevant. It is critical to this case for both obstruction of justice and perjury that you accept and understand, as I think clearly you do from listening to all of this, that the President lied many times in that deposition in the Jones case because he didn't want them to get the facts, the true facts of his relationship with Monica Lewinsky.

In that process of looking at that, he needed Monica, if you recall, to file a false affidavit. He needed to obscure the fact that there were gifts there. He needed to obscure the trail that led to him in any detailed relationship with her.

So let's take, for example, the gift-exchange discussion counsel had out here a couple of days ago with us. They were pointing out to you—the White House counsel—that on December 28, that

Monica Lewinsky, in her grand jury testimony, testified that the President said to her—with respect to what she should do about those gifts, and she raised giving them to maybe Betty Currie—I don't know or let me think about that.

The counsel said, well, let's go back and look at 10 different times where she said about that subject all kinds of different ways. I submit to you that her grand jury testimony, after she got the immunity to testify, is clearly the most credible. We presented that to you, and that is what the President said.

It is significant what he said, because that is part of your chain you have to lead down the road to figure out whether or not he had the requisite intent to influence the outcome of what was done with the gifts.

The reality of this is that when you look at it, you have to question her testimony; you have to question her believability. You ought to bring her out here. She should be brought out here, if they are going to challenge her like this, and give an opportunity for us to examine her on both sides and determine what is her best testimony about that, if that is important to you, and apparently it is to White House counsel.

The same thing is true of the questions with regard to Ms. Currie and the phone call dealing with the question of coming over to get the gifts. There White House counsel is saying, in essence, Ms. Lewinsky is not telling the truth; Ms. Currie is. If you don't have them here to listen to, who are you going to believe? I suspect if Ms. Lewinsky came out here, that 1-minute phone conversation, which was not part of the Starr referral—we discovered that subsequent to that—would be something she could comment on and explain, and maybe Ms. Currie could, too. But we do not have that. And they made a big to-do over that in the last couple days.

Last, but not least, what I put up on the chart here is dealing with this affidavit. This affidavit is very important. It is a central part of the obstruction of justice. It is the very first obstruction of justice and the question of truthfulness. And who you believe in this pattern is very, very important.

The White House counsel have been arguing the last few days that, indeed, with regard to the cover stories, that there was no discussion of cover stories in a timely way during the December 17 phone conversation when the President suggested Monica Lewinsky file an affidavit, and that the cover story idea somehow isn't tied into the issue of putting into her head that she should tell a lie.

I call your attention to what I read to you the other day. It is up here on this board. And I refer it back to you on the chart. This is one of the charts where she testified before the grand jury—Monica Lewinsky did:

> At some point in the conversation, and I don't know if it was before or after the subject of the affidavit came up—

I don't know if it was before or after, but it was during that conversation on December 17 when the affidavit did come up—

> he sort of said, "You know, you can always say you were coming to see Betty or that you were bringing me letters." Which I understood was really a reminder of things that we had discussed before.

And she went on to say the famous quote: "And I knew exactly what he meant [by this]."

And if you remember—I read that to you the other day—she also said: "It was the pattern of the relationship, to sort of conceal it."

I am not going to put the other board up here, but in the same context they have been saying, with respect to this affidavit issue again, "No one asked me to lie." Remember that was repeated over and over and over again. And I, again, point out to you that you need to bring her in here, I think, based on what they are saying and arguing, to find out for yourself if she is going to corroborate this.

She said in the grand jury testimony:

> For me, the best way to explain how I feel what happened was, you know, no one asked or encouraged me to lie, but no one discouraged me either.

And she went on to say: "And by him not calling me and saying that"—that she shouldn't lie; I didn't read the whole paragraph—"I knew what [he] meant."

"Did you understand all along that he would deny the relationship also?"

She says: "Mm-hmmm. Yes."

The question: "And when you say you understood what it meant when he didn't say, 'Oh, you know, you must tell the truth,' what did you understand that to mean?"

She says: "That—that—as we had on every other occasion and every other instance of this relationship, we would deny it."

If you believe her, then the President is not telling the truth. The affidavit clearly is something he was trying to get her to file falsely. It makes sense that he would, because he relied on it in the deposition. He patterned it after the cover stories in the affidavit—what he had to say—the lies he told about the relationship. It makes common sense to me.

The CHIEF JUSTICE. Mr. McCOLLUM, I think you have answered the question.

Mr. Manager McCOLLUM. Thank you very much.

My point is, you ought to bring the witnesses.

The CHIEF JUSTICE. The question from Senator BRYAN to the White House counsel:

> Would you please comment on any of the legal or factual assertions made by the managers in their response to the previous question, focusing on the need for witnesses and the time likely required to prepare for and conduct discovery?

Mr. Counsel KENDALL. Mr. Chief Justice, the first question to ask about the need to call witnesses is, What would the witnesses add? That has not been described. What you have heard are vague expressions of credibility and hope. You have not heard specifically what these witnesses would add. And the answer to that is, they would add nothing to what is not already there.

Yesterday, I held up the five volumes of testimony, thousands and thousands of pages. You have it before you. Now, those five volumes represent 8 or 9 months of activity by the independent counsel. The independent counsel called many, many, many witnesses, many, many, many times. They proceeded with no limitation on their budget, on their resources. They turned things upside down. And they repeatedly—I think abusively—but they repeatedly

called witnesses—like Ms. Currie, Mr. Jordan, Ms. Lewinsky—back to the grand jury for repeated interviews. It is all right there. And the managers have really told you nothing that could be added to this record.

Second, they have not made a representation about what the witnesses would really say that is different. And the reason they have not is that they themselves don't know. They themselves have done no investigation. They don't know what these witnesses would say. They are hoping that maybe something will turn up.

What they have done is they have taken those five volumes, and more, from the independent counsel. And I am reminded of the old bureau that many newspapers had called "Rewrite." That was not a bureau which did independent reporting. When an editor read something that was incomprehensible, he or she would say, "Get me Rewrite." So what the House has done is gotten "Rewrite" to write up its own report. They cannot tell you—they can tell you what they hope—they cannot make a representation or a proffer to you about what any witnesses would say.

Their third, and really their only argument, is the credibility argument—got to see these witnesses. In point of fact, in the real world, when you have witnesses, their stories often differ in some ways. They differ not because anybody is lying; they differ only because people don't always have precisely the same recollection of things. That doesn't mean that looking at them will add anything other than getting for you the 6th, 7th, 8th, 9th, 10th account of what some witnesses said.

For example, in our trial brief, we quote—and Mr. MCCOLLUM referred to this—at pages 66 to 67, 11 accounts that Ms. Lewinsky has given on the gift exchange. I do not think you are going to learn anything from a 12th account. And by the way, with respect to the question of she might have testified differently after she got immunity, 9 out of 11 of these accounts were given, as you will see from the dates and the testimony, after she got immunity. Calling witnesses will add nothing to the record now before you. All the major witnesses have testified, and their testimony is right there.

In response to the question of how long it will take, I must tell you, we have never had a chance to call witnesses ourselves, to examine them, to cross-examine them, to subpoena documentary evidence—at no point in this process. It would be malpractice for any lawyer to try even a small civil case, let alone represent the President of the United States when the issue is his removal from office, without an adequate opportunity for discovery.

I think if they are going to begin calling witnesses, and going outside the record, which we have right now—I think the record is complete; and we are dealing with it as best we can without having had an ability ourselves to subpoena people and cross-examine them and depose them—but I think you are looking realistically at a process of many months to have a fair discovery process.

The CHIEF JUSTICE. This question is from Senator CHAFEE. It is to the House managers:

The White House defense team makes a lot out of Monica Lewinsky's statement that she delivered the presents to Betty Currie around 2:00 or 2:30 and about the fact that the phone call came from Betty Currie at 3:32. Isn't it reasonable to as-

sume that Ms. Currie meant that she delivered the presents to Ms. Currie in the afternoon?

If the President was unconcerned about the presents, as he said in his grand jury testimony, why didn't he simply tell Ms. Lewinsky not to worry about it?

Mr. Manager HUTCHINSON. Thank you, Mr. Chief Justice.

Let me just broadly review the whole gift issue and the discrepancy in the testimony.

First of all, I want to go back to Mr. Ruff's presentation during the last 3 days.

He argued that I unfairly characterized Betty Currie as having a fuzzy memory whenever she was unclear. And she was clear that it was her memory that Monica Lewinsky called to initiate the retrieval of the gifts. And, of course, that is in conflict with the testimony of Monica Lewinsky.

Further, they argue that Monica Lewinsky's time sequence as to when she went to pick up the gifts, when Betty Currie went to pick up the gifts, destroys her credibility. Her time sequence does not fit. Let's look at her testimony on this particular point. This is what Betty Currie has testified to, and this is exhibit H–A in your folder on my presentation; exhibit A. These are statements of Betty Currie in her deposition testimony about when she picked up the gifts.

The first one is her testimony on January 27, 1998. She was asked when she picked up the gifts, and she said, "Sometime in the last 6 months;"

In May she was asked when she picked up the gifts, and she said, "A couple of weeks" [after the December 28 meeting]; in the May 6 testimony, it was after the 28th meeting; and then in her last testimony, July 22, in the "fall maybe."

That is Betty Currie's testimony. Contrast that to that of Monica Lewinsky.

This is her recollection as to when Betty Currie came to pick up the gifts. You will see that she has testified in her proffer of February 1, "Later that afternoon"; July 27, she said Currie called "several hours after leaving the White House;" "about 2 o'clock"; "Later in the day"; and August 6, called "several hours" after Lewinsky left the White House. Her memory is fairly good about this.

The question is, the cell phone call, which really corroborates what Monica Lewinsky said, that it was Betty Currie who called to retrieve the gifts, and said the President said, "You have something for me," or something to that effect. That came about 3:30. The cell phone record was retrieved after Monica Lewinsky's testimony.

Does this destroy her credibility, particularly in contrast to that of Betty Currie? I think it reflects that you are trying to remember—you remember that it was a call specifically from Betty Currie to retrieve the gifts. At the time, she said it was in the afternoon. I think it corroborates her because she has never had an opportunity to look at the cell phone record—neither has Betty Currie—to refresh her recollection and trigger it and see what that produces.

That is on the gift issue.

They say, What would it add to call witnesses? How are you going to determine the truthfulness of this issue? Juries across the country do it by calling witnesses.

In this particular case, it should be noted that all other testimony of Betty Currie—I think her last one was about July 27 before the grand jury—all of it preceded the testimony of William Jefferson Clinton which was in August before the grand jury. The point is, because of the rush, the push, the independent counsel didn't call anybody back to the grand jury to re-question them after the information received from William Jefferson Clinton.

So there are a lot of unanswered questions, perhaps, that were generated by his testimony. The 1-minute call was raised: How in the world could this be expressed in 1 minute—the conversation that Betty Currie called to retrieve the gifts? If you look at Monica Lewinsky's description of that call—excuse me, let me read from her grand jury transcript. She was asked about the call, and her answer was:

What I was reminded a little bit, jumping back to the July 14th incident where I was supposed to call back Betty the next day, but not getting into the details with her that this was along the same lines:

Question to Monica Lewinsky:

Did you feel any need to explain to her what was going to happen?

Her answer:

No.

In other words, this was a cell phone call. It was a cryptic call. It was about retrieving gifts that were under subpoena. It was a short conversation. It doesn't take a minute to say, "The President indicated you had something for me"—Monica knows what she is talking about—"Come over," and that is the end of the conversation—certainly it would not take 1 minute.

So all of the evidence is consistent with Monica's testimony.

But let's look at the big picture on the gifts. The evidence was concealed under the bed. It was evidence that was concealed in a civil rights case; secondly, it was under subpoena; thirdly, the President knew it was under subpoena; and fourthly, Monica Lewinsky's testimony indicates that it was, the call from Betty Currie, at the direction of the President—and I am arguing there, a little; please understand that—which initiated the retrieval of the evidence that was under subpoena.

That is the big picture on this. I believe we have made our case on that, and I believe it is strong, and I think it also justifies the hearing of the testimony to resolve the remaining conflict.

The CHIEF JUSTICE. This is to the President's counsel from Senators LEAHY, SCHUMER, and WYDEN:

Notwithstanding the previous response by the House manager, does not the evidence show:

(a) Ms. Lewinsky's testimony; it was her idea to give the gifts to Betty Currie?

(b) the President's testimony; that he never told Betty Currie to retrieve the gifts from Ms. Lewinsky?

(c) Betty Currie's testimony; that it was Ms. Lewinsky, not the President, who asked her to pick up the gifts? And,

(d) the fact that the President gave Ms. Lewinsky additional gifts on the very morning that he is alleged to have asked for them back?

Mr. Counsel RUFF. Mr. Chief Justice, I am not sure I managed to capture all four subpoints of that question but I will do my best.

It is interesting that the managers now suggest that the great discovery of the 3:32 phone call that was so much the heart and soul of Mr. Schippers' presentation and ultimately of theirs is really just a slight glitch in the timetable.

Yes, it is perfectly possible, I suppose, that Ms. Lewinsky could have just missed by an hour and a half, but she did say, three times, once under oath, and twice to the FBI, which is almost the same, that it was 2 o'clock, not 3:30.

So if you are going to ask, consistency, good memory, as Ms. Lewinsky is supposed to have on this matter, she was consistent, but you have to ask, if it really happened at 2 o'clock as she recalled, what is the meaning of the 3:32 call?

Putting aside that dispute, the question itself reflects the essence of our position on this. First of all, there are only two people present at the moment in which, theoretically, the managers would have that the President urged Betty Currie to go off and pick up the gifts. The President of the United States and Betty Currie, they both testified, flatly, that such a conversation did not occur. Do the managers really anticipate if Ms. Currie were brought into the well of the Senate and looked straight in the eye by one of the prosecutors on this team, she would say, "You got me, I had it wrong. The President really did tell me to do something but I have testified straightforwardly and honestly"?

He didn't say, as my colleague Mr. Kendall indicated—that is wish and hope, and it has no basis in the allegation.

And, of course, the managers have thought up a good excuse for why it is that the President is giving Ms. Lewinsky more gifts on the very day when he is conspiring with her to hide them: That somehow it is a gesture, a message being sent, that because of these gifts she is someone who is being roped into a conspiracy of silence.

Aside from the fact that there is not one single—not one single—iota of evidence to support that wishful thinking, is it really likely, even given the managers' perception of this matter, that by giving Ms. Lewinsky the bear that my brief but important colleague Senator Bumpers referred to yesterday, and a pin of the New York skyline, and a couple of other things, including a Radio City Music Hall scarf—I may have missed some—that some great message was being sent to Ms. Lewinsky, that this collection of "valuable" items was a message to keep the faith, stay inside a conspiracy? I don't think so.

Thank you, Mr. Chief Justice.

Mr. LOTT. Mr. Chief Justice, may I inquire about the time that has been used on each side?

The CHIEF JUSTICE. I will ask the Parliamentarian.

The counsel for the White House has consumed 57 minutes. The counsel for the managers have consumed 54 minutes.

Mr. LOTT. I believe we have a question at the desk.

The CHIEF JUSTICE. This question is directed to the House managers, proposed by Senators SNOWE, ASHCROFT, ENZI, BURNS, SMITH of New Hampshire, and CRAIG:

At the end of the Jones deposition, Judge Wright admonished the parties that, "This case is subject to a protective order regarding all discovery, and all parties present, including the witness, are not to say anything whatsoever about the questions they were asked, the substance of the deposition . . . any details, and this is extremely important to this court." Within hours of Judge Wright's admonition to all parties not to discuss details of the deposition, didn't the President telephone Betty Currie to ask her to make a rare Sunday visit to the Oval Office?

Before answering, the Chair wishes to make a correction in response to the inquiry from the majority leader. The time used by the House managers is 64 minutes, rather than 54 minutes.

Mr. Manager ROGAN. I trust that doesn't mean I have to sit down, Mr. Chief Justice.

The CHIEF JUSTICE. It is not retroactive.

Mr. Manager ROGAN. Maybe I should quit while I am ahead.

I thank the Senators for their question. That is absolutely true, and we know that because Betty Currie testified to that. She said it was very rare to receive a phone call from the President to ask her to come down to the White House on Sunday. A day after the President testified in a deposition, when he was specifically admonished by the judge that he was not to discuss the deposition, he was not to detail it with anybody, he was not to go into any of those factors, the President called Betty Currie down to the White House and he made some specific statements to her. He said to her:

I was never really alone with Monica, right?
You were always there when Monica was there, right?
Monica came on to me and I never touched her, right?
She wanted to have sex with me, and I cannot do that.

When the President was asked 8 months later:

Why did you call Betty Currie down to the White House and pose not questions, but statements to her?

When he was asked why he called Betty Currie down to the White House and said that to her, this is how the President responded:

I was trying to figure out what the facts were. I was trying to remember.

That is patently false because in August when the President testified, embarrassment was no longer on the table. The President was admitting that he had, as he called it, an improper relationship with Ms. Lewinsky. So why did he call Betty Currie down there? He called her down there that day after the deposition, in violation of the judge's order, because throughout his deposition he kept referring to Betty Currie as the fountain of information. If you read the deposition testimony, you see the President reiterating over and over, "Monica came to see Betty," and, "You would have to ask Betty." He made innumerable references to Betty Currie.

That was his invitation to the Jones lawyers to depose Betty Currie, and we know from Mr. Manager HUTCHINSON's presentation earlier that that is what happened. Betty Currie ended up with a subpoena from the Jones lawyers, and the President could not waste any time; he had to make sure, with discovery closing, that he got to Betty Currie right away, to make sure that the story was straight.

How can one possibly say that he was posing the statements to Betty Currie to remember, when the President knew that in fact he was alone with Monica, that Betty wasn't always there with him when Monica was in the Oval Office with him? She would not be able to tell him that Monica came on to him and not the other way around. This is patently ludicrous. There is no reasonable explanation.

Mr. Chief Justice, if I have a minute left, I would like to yield to Mr. Manager HUTCHINSON.

The CHIEF JUSTICE. Yes.

Mr. Manager HUTCHINSON. Thank you. Just a quick point on that, because there was a question raised that the testimony of Betty Currie in that circumstance was that she, I believe, did not feel pressured. The President's counsel makes a big issue of that, as if this is a fatal defect. It is not a fatal defect.

In fact, it is really irrelevant because the issue is witness tampering, obstruction of justice. The question is the President's intent, not how Betty Currie felt under that circumstance. She can characterize what she wishes. To me, it is an example like, if you as a lawmaker are presented a bribe of $100,000 to cast your vote in a particular way, you might not be tempted in the slightest. You might say, "Go your own way." But it is still attempted bribery, attempted obstruction of justice. So that is a critical question. This is one element of obstruction of justice where each element has been met. The proof is clear, without any question of a doubt, as well as the rest of it.

Thank you, Mr. Chief Justice.

The CHIEF JUSTICE. This is a question to White House counsel from Senator KENNEDY:

> Would you please comment on any of the legal or factual assertions made by the managers in their response to the previous question?

Mr. Counsel RUFF. Thank you, Mr. Chief Justice. Let me start by actually responding briefly to the question that was asked, which is whether in fact the President violated the gag order. I think it is important that we be very direct and candid on this so the record is clear.

There is no question that a gag order was issued, that it had been in existence for some 3 months, and it applied to the parties and lawyers. It is important, I think, to understand the purpose for which it was entered.

During the months of litigation in the Jones case, we have seen a veritable flood of leakage out of the deposition, all of which was adverse to the President. The judge made very clear that her concerns were revelations to the press.

I think it is fair to say that even if one might argue that the President talking to his secretary on the day after a deposition was somehow talking to a person that he should not after his deposition, I suggest that any person covered by—certainly a party covered by a gag order, particularly the President of the United States, is free to speak with those from whom he needs assistance in the preparation of his defense. That, of course, is at least in part what the President has said here.

But let me be very clear that, to the extent the President overstepped his bounds in terms of this gag order, that is a matter of concern that the judge could take up, or the parties could take up. And as far as I know—probably because their sense of shame would not permit it—the parties on the other side of the Jones case have never suggested that this was a problem. Indeed, it was not a problem until we heard about it recently in this Chamber.

More specifically, with respect to the substance of Mr. Manager ROGAN's response, and Manager HUTCHINSON's response, my colleague, Ms. Mills, told you what the essential human dynamic was that was going on with the President, who had just gone through a deposition in which his worst fears were being realized—his life, in terms of his relations with his family, was beginning to unravel. He could see it coming. He could see the press coming at him. They were already on the Internet. There was no question in his mind that his worst fears of public disclosure were about to be realized.

Put yourselves in a comparably traumatic human situation and ask whether you wouldn't reach out to have this kind of conversation with the one person you knew who was the most familiar with the facts that Monica Lewinsky had, indeed, been in and out of the White House, exchanged gifts, and done all the other things that Betty knew about, even though she didn't know about the primary extent of their relationship. But ask yourself also whether, in fact, under any circumstances, either on the 18th of January when the first conversation occurred, or on the 20th of January when we believe the second conversation occurred, if there is really any reason to believe that the President had somehow invited Jones lawyers to make Betty Currie a witness, because, as my colleague, Ms. Mills, put it most sharply and most clearly, the last thing in the world the President of the United States wanted to do was to invite anybody to depose or have testify the one woman who knew that, indeed, there had been gifts exchanged, and visits, and letters. It simply doesn't make sense.

Lastly, let me, I suppose, just ask as the question has been put to you on a couple of occasions, what is it that would come from calling witnesses in the case? Ms. Currie has testified not just once, but a multiple of occasions about the events, no new facts had come out, and the only thing that you would hear would be a repetition of the bottom-line assessment. I could have said wrong when he said right and I was under no pressure whatsoever.

Thank you.

The CHIEF JUSTICE. This is from Senators GRAMM of Texas and SMITH of New Hampshire to White House counsel:

> If you said that our oath to impartial justice required us to allow the President to have a handful of witnesses to defend himself, don't you believe that all 100 Senators would say "yes"? How can we do impartial justice by turning around and denying the House that same right?

Mr. Counsel RUFF. Thank you, Mr. Chief Justice.

Senators, the answer to that question, I think, is really very straightforward and easy and the fog of some of the discussion which has been had on the subject over the last days and weeks ought not to get in the way of this.

The House of Representatives, at least as they are described by the managers they sent to you—I don't know how to put this gent-

ly—violated their constitutional responsibility in the handling of this matter. They characterized themselves as nothing more than a grand jury, nothing more than a screening device between the allegations transported to them by the independent counsel, and the ultimate vote a month and 3 days ago. They felt, as they have reiterated constantly during that process, that they knew everything they needed to know not to make the judgment; that it was worth sending on to the Senate for them to think about. But they knew everything they needed to know, as you heard them say so eloquently and so forcefully here, to remove the President of the United States from office. Now they are saying to you, "Well, maybe not. There really isn't enough here to make that important critical judgment."

So having abandoned—not to put it too sharply—what I view and I think most would view as their obligation to do the right constitutional thing a month ago, they turn to us and say, "Well, protect our managers rights to just add a little bit and see if we can make it, and then we will turn to you and see if you want to call witnesses in response."

Senators, I really think they should have done it right the first time. And they have told you—not back then, but they have told you now—that they have done it right, because otherwise they wouldn't, as a matter of their responsibility, be able to stand in the well of this Senate and urge you to remove the President of the United States. How could they make that recommendation if they had any uncertainty? If they didn't believe what was in those five volumes was sufficient under the day, they couldn't. They couldn't.

Our rights are these for the President of the United States: He is entitled to ask you whether, when the House of Representatives voted to impeach him, they had enough evidence to make one of the most serious constitutional judgments that is entrusted to them. And it can't be that because they didn't do it right then, that you and we are now asked to extend this process just so that maybe if they go to the right person and ask the right question, or find the right document something will emerge that translates those five volumes into something that really is a constitutional basis for the removal of the President.

The CHIEF JUSTICE. This is from Senator FEINGOLD to the House managers.

> In light of the allegations in the articles of impeachment that the President is guilty of providing "perjurious" statements to a grand jury and has "obstructed . . . the administration of justice," is the appropriate burden of proof for these particular articles "beyond the reasonable doubt," as it would be in an ordinary criminal proceeding? Should a Senator vote to convict the President based on his allegedly committing these Federal statutory crimes if each of the elements of the crimes have not been proven beyond a reasonable doubt?

Mr. Manager BUYER. Thank you, Mr. Chief Justice. And I say to Mr. Ruff, I violated no oath nor the Constitution, and I think the House managers, in fact, followed the Constitution when we served the articles of impeachment. I also note, for historical note as well, Mr. Ruff, you know that in the impeachment trial of Andrew Johnson, the House didn't even hold a single hearing.

So I just want to be very up front and fair here.

With regard to the question that was asked by the gentleman, the Constitution does not discuss the standard of proof for impeachment trials. It simply states that the Senate shall have the power to try all impeachments. Because the Constitution is silent on the matter, it is appropriate to look at past practice of the Senate.

Historically, the Senate has never set a standard of proof for impeachment trials. In the final analysis to the question, one which historically has been answered by individual Senators guided by your individual conscience. You will note that earlier one of the White House counsel stood up—and they like to talk to you about criminal statutes and cite that it requires the proof beyond a reasonable doubt. That is not so. This argument has been rejected by the Senate historically.

For instance, in the impeachment trial of Judge Harry Claiborne, at that time the counsel for Judge Claiborne moved to designate beyond a reasonable doubt as the standard of proof for conviction. The Senate overwhelmingly rejected the motion by a vote of 17 to 75. You rejected that as a standard of proof.

In the floor debate on the motion, the House managers emphasized that the Senate has historically allowed each Member to exercise his personal judgment in these cases. And during the impeachment of Judge Hastings, Senator Rudman, in response to a question about the historical practice regarding this standard of proof that there has been no specific standard, "You are not going to find it. It is what is in the mind of every Senator, and I think it is what everybody decides for themselves."

The criminal standard of proof again is inappropriate for impeachment trials. The result of conviction in an impeachment trial is removal from office, not punishment. As the House argued in the trial of Judge Claiborne, the reasonable doubt standard was designed to protect criminal defendants who risked forfeitures of life, liberty, and property. This standard is inappropriate here because the Constitution limits the consequences of a Senate impeachment trial to removal from office and disqualification from holding office in the future, explicitly preserving in the Constitution the option for a subsequent trial in the courts.

In addition, the House argued in the Claiborne trial the criminal standard is inappropriate because impeachment is, by its nature, a proceeding where the public interest weighs more heavily than the interest of the individual. Again, the criminal standard of proof, i.e., beyond a reasonable doubt, is inappropriate in an impeachment trial and, Senators, you are to be guided by your own conscience in your decision.

The CHIEF JUSTICE. The President's counsel are asked by Senators THOMPSON, SNOWE, ENZI, FRIST, CRAIG, DEWINE, and HATCH:

Four days after the President's Paula Jones testimony, wherein he testified under oath about Ms. Lewinsky, why would Dick Morris conduct a poll on whether the American people would forgive the President for committing perjury and obstruction of justice?

Mr. Counsel RUFF. I couldn't find any volunteers.

[Laughter.]

You know, I think the honest answer has two pieces to it. I don't have a clue, and it ultimately—although I know it rings all sorts

of bells and the use of that name conjures up all sorts of images, and that is why I am sure it finds its way into this process from the managers' side. But if you look at the record, other than the value that may come to the managers of making reference to that conversation—and I have no idea whether the conversation ever occurred or not—it seems to me of absolutely no relevance whatsoever because, as far as I am able to represent to you, and if the conversation occurred, there is nothing in this record that suggests that it had any impact on the conduct of the President or any other person. We know that he did wrong. We know that he misled the American people when he said that he had not had relations with Ms. Lewinsky.

I am not sure what a conversation with Mr. Morris, if it occurred, or a poll, if it was asked for, or what the motivation behind that poll means once you come to grips with the fact that the President of the United States was deceiving his family, his child, his wife, his colleagues, and the American people in that period in January.

Beyond that puzzlement about relevance, other than the surmise that there must be some dark linkage between the poll and some legal issue before you—and I haven't seen it—I am really otherwise unable to answer your question.

The CHIEF JUSTICE. Senator LIEBERMAN asks the House managers:

> The House managers argue that the President should be removed from office because of the inconsistency between his actions and the President's duty to faithfully execute the laws. Given that any criminal act would arguably be at odds with the President's duty to execute the law, is it your position that the President may be impeached and removed for committing any criminal act, regardless of the type of crime it is? If the President were convicted of driving while intoxicated, would that be grounds for removal? What if he were convicted of assault?

Mr. Manager GRAHAM. Thank you, Mr. Chief Justice. Excellent question.

The answer is no, I would not want my President removed for any criminal wrongdoing. I would want my President removed only when there was a clear case that points to the right decision for the future of the country. Just remember this. Our past is America's future in terms of the law. I would not want my President removed for trivial offenses, and that is the heart of the matter here.

I think I know why he took a poll. I think I know very well what he was up to: That his political and legal interests were so paramount in his mind, the law be damned and anybody who got in his way be damned.

Those are strong statements, but I think they are borne out by the facts in this case, and that is what I would look for. I would look for a violation of the law that is the dark side of politics. I would look for something like Richard Nixon did. Richard Nixon lost faith with the American electoral process. He believed his enemies justified being cheated; that when his people broke into the other side's office, when confronted with that wrongdoing, he legitimized it. He didn't trust the American people to get it right, and he went out in shame.

My belief is that this President did not trust the American legal system to vindicate his interest without cheating. My belief is that

when he went back to his secretary, it is not reasonable that he was trying to refresh his memory and get his thoughts together. My belief is that he tried to set up a scenario that was going to make a young lady pay a price if she ever decided to cooperate with the other side. I believe he did not need to refresh his memory whether or not Monica Lewinsky wanted to have sex with him and he couldn't. I don't believe he was refreshing his memory when he asked his secretary: I never touched her, did I?

I believe that you should only remove a President who, in a calculated fashion, puts the legal and political interests of himself over the good of the Nation in a selfish way, that you only should remove a President who, after being begged by everybody in the country, don't go into a grand jury and lie, and he in fact lied. Nothing trivial should remove my President. We need to try this case, ladies and gentlemen, because you need to know who your President is.

Thank you.

Mr. LOTT addressed the Chair.

The CHIEF JUSTICE. The Chair recognizes the majority leader.

Mr. LOTT. I would like to note that in the response to the previous question, question probably No. 28, that it was not filed by the managers; it was filed by a group of Senators.

RECESS

Mr. LOTT. With that, I ask unanimous consent that we take another brief recess of 15 minutes.

There being no objection, at 4:18 p.m., the Senate recessed until 4:40 p.m.; whereupon, the Senate reassembled when called to order by the Chief Justice.

The CHIEF JUSTICE. The Chair recognizes the majority leader.

Mr. LOTT. Thank you, Mr. Chief Justice. Mr. Chief Justice, I had indicated that we will probably go 5 hours today, which would take us to approximately 6 o'clock. But I think we will certainly go for at least another hour or so, perhaps not quite all the way to 6 o'clock, but we will talk to each other and look for a signal from the Chief Justice about exactly when to end the day's proceedings.

At this point, Mr. Chief Justice, I believe we are ready for the next question. I believe the previous question came from Senator LIEBERMAN; therefore, I send the next question to the desk.

The CHIEF JUSTICE. This question is from Senators THOMPSON and SNOWE, to the House managers:

> Do the managers wish to respond to the answer given by the President's counsel with regard to the poll taken by Dick Morris?

Mr. Manager BRYANT. Thank you, Mr. Chief Justice.

Just before we recessed, there was a question directed to the President's defense attorneys regarding the Dick Morris poll. One of the responses to it was that it was basically irrelevant. I think it is one of the more important things that has occurred in this case, because—and I think it is very important—because we get a look inside that window that is blocked for the most part throughout these proceedings. We really get an eye into the minds that are working here. Not only does it say volumes about a person who has to take a poll and decide whether or not to tell the truth, it also

provides a great deal of information toward the actual state of mind, the actual willfulness, the actual intent of the actor in this case who has had the poll taken.

Let me just read briefly from the referral regarding this incident. It talks about how Mr. Morris tells the President that this country has a great capacity for forgiveness and we should consider tapping into it. The President responds, "Well, what about that legal thing, you know, the legal thing, you know, Starr and the perjury and all?" And they go on and have a discussion and decide to take a poll that night. Now this is January 21.

And in all fairness to the President, it is not clear from the record that I have that he had had a conversation with Sidney Blumenthal and John Podesta that day, before this effort—the poll was taken, and the results reported that same day, late that evening—or whether the conversation with Mr. Podesta and Mr. Blumenthal occurred afterwards. Those are the ones, in essence, where he questioned what went on, and also with Mr. Blumenthal fairly well attempted to discredit Ms. Lewinsky, too. And you will see how that may or may not tie in, again, depending on the chronology. But certainly all those events happened the same day.

Mr. Morris takes the poll and reports later that day, later that evening, the same evening, the 21st, the results of that, and basically says the voters are willing to forgive the President for adultery but not for the perjury or the obstruction of justice. And then according to Mr. Morris, the President answers, "Well, we['ll] just have to win, then." And later the next day the President has a followup conversation with Mr. Morris, in the evening, and says that he is considering holding a press conference to blast Monica Lewinsky out of the water. But Mr. Morris urges caution. He says, "Be careful." According to Mr. Morris, he warned the President not to be too hard on Ms. Lewinsky because "there's some slight chance that she may not be cooperating with Starr, and we don't want to alienate her by anything we're going to put out."

That is chilling. It truly is chilling that our chief law enforcement officer, the person who sends our soldiers off as Commander in Chief, to possibly die, the person who appoints the Federal judges, nominates Supreme Court Justices, appoints U.S. attorneys around the country who try 50,000 cases a year, has that mentality. And it goes to the state of mind here. And the willfulness and the intentions, from that point forward, certainly are reflected in the perjury and the efforts to continue the obstruction, the pattern, the overall pattern—not just one little incident.

I urge you, Senators, as you consider this, to consider it carefully. As I said in my opening remarks, do not isolate little facts here and there and take the spins. But in every—every—alleged act, ask yourselves the two questions—whether it is the hiding of the gifts, the filing of the false affidavit, letting Bob Bennett use that false affidavit while sitting still, talking to Sidney Blumenthal and John Podesta about what did not really happen, the job search—ask them, every one of those, What was the result, what was the result of those actions?

I think in every case you will see that something occurs to block the Paula Jones case, the discovery of evidence, the receipt of truthful testimony. Ask yourselves the second question: Who bene-

fits from that? And I will guarantee you every time, in every one of those instances, it is the President who benefits, who derives the effect of that. He is either the luckiest man in the world because of this and having people willing to commit crimes for him or he is somewhere in the background orchestrating this.

The CHIEF JUSTICE. This is from Senators LEAHY, HARKIN, DORGAN, and REID of Nevada, to the President's counsel:

> In his opening remarks to the Senate, Manager MCCOLLUM stated, "I don't know what the witnesses will say, but I assume if they are consistent, they'll say the same thing that's in here," referring to the 60,000 page record currently before the Senate. I see no reason to call witnesses to provide redundant testimony.
>
> Could you comment on Mr. MCCOLLUM's statement and clarify also the timetable which might have to be considered for discovery if witnesses are called?

Mr. Counsel KENDALL. Mr. Chief Justice, I think, as I said in an earlier question, that the answers the witnesses would provide are already contained in the five volumes of testimony. As I am sure you are aware, when I say five volumes, that is not really five volumes, because on many of the pages the grand jury transcript is shrunk, called a miniscript, so you get 6 pages of testimony per page. Your eyesight may fail you before you get through. The witness testimony is there. I don't think calling the witnesses again will add anything to that.

In terms of a discovery schedule, it is hard to say, because we have had no opportunity to shape the record. We don't know what we will need. We would need documents. We would need testimony. One deposition could lead to another. I think we are talking a matter of a few months to finally get through it.

But I think the real question is, What questions are there that have not been asked? I think if you ask that question, What questions are there that have not been asked, you will find there are no questions. In fact, there are questions that have been asked a number of times.

Mr. Manager HUTCHINSON told you that the independent counsel didn't have a chance to ask questions after the President's testimony. Indeed he did. You will see that Ms. Lewinsky was examined after the President testified, both in the grand jury and in FBI interviews. I don't think that witness interviews or further evidentiary proceedings will add in any measurable way to the record before you.

The CHIEF JUSTICE. This question is directed to the House managers by Senators HATCH, THOMPSON, DEWINE, and WARNER:

> The unanimous consent agreement pending before the Senate permits the filing of a motion to dismiss next week. What legal standard should the Senate apply, and applying that standard to this case, what specific acts of Presidential misconduct would a Senator deem unworthy of impeachment by voting for a motion to dismiss?

Mr. Manager HYDE. Mr. Chief Justice, Members of the Senate, the President wants all of the protections of the criminal trial beyond a reasonable doubt, standard of proof, strict pleadings, but yet deny us the right to call any witnesses.

In the House we did not call witnesses and there is a reason. There are several reasons for that. First of all, we were operating under time constraints which were self-imposed but I promised my colleagues to finish it before the end of the year. I didn't want it to drag out. We had an election intervene, we had Christmas, but

we did—because we had 60,000 pages of sworn testimony, transcripts, depositions, grand jury testimony, and we had a lower threshold.

The threshold in the House was for impeachment, which is to seek a trial in the Senate. We could not try the case in the House. The Constitution gives the Senate the exclusive right to try the case. All we could do was present evidence sufficient to convince our colleagues that there ought to be a trial over here in the Senate. And we did that.

But now that we are over here—by the way, we were roundly criticized for not producing any witnesses. And I might add, Mr. Kendall has said repeatedly they did not have a fair discovery process; they didn't have any witnesses and weren't permitted to cross-examine.

I want to tell you, repeatedly—repeatedly—I invited the President's lawyers, the staff of the Democrats on the House Judiciary Committee: Any witnesses you want, call them; give me their names and we will bring them in and you can cross-examine them to your heart's content.

No, they never did. Finally, they brought in some professors and Mr. Ruff testified, Mr. Craig testified. But they didn't want, in fact, any witnesses. That is the last thing they wanted. They had full opportunity to call them, and I really, really, bristle when they say, "You were unfair." We wanted to be fair. We tried to be fair because we understand you need a two-thirds vote to remove the President. We needed Democratic support. So far we had none. That is OK. Let the process play itself out. But we were fair.

And when Mr. Kendall says they had no opportunity, he means they didn't avail themselves of an abundant opportunity to call witnesses.

A motion in lieu of a trial should provide that all inferences, all fact, questions, be resolved in favor of the respondent, the House managers. I don't think that is going to happen. I think by dismissing the articles of impeachment before you have a complete trial, you are sending a terrible message to the people of the country. You are saying, I guess perjury is OK, if it is about sex; obstruction is OK, even though it is an effort to deny a citizen her right to a fair trial. You are going to say that even when judges have been impeached for perjury—and, by the way, the different standards between judges and the President: This country can survive with a few bad judges, a few corrupt judges; we can make it; but a corrupt President, survival is a little tougher there. So there is a difference, and the standard ought to be better and more sensitive for the President because the President is such an important person.

Look, the consequences of cavalier treatment of our articles of impeachment, your articles of impeachment: You throw out the window the fact that the President's lies and stonewalling have cost millions of dollars that could have been obviated. The damage to sexual harassment laws—you think they are not going to be damaged? They are, seriously, making it more difficult to prosecute people in the military or elsewhere for perjury who lie under oath. Those are serious consequences.

I know—oh, do I know—what an annoyance we are in the bosom of this great body, but we are a constitutional annoyance, and I remind you of that fact.

Thank you.

The CHIEF JUSTICE. This question is from Senator DURBIN to counsel for the President:

Can you comment on Manager HYDE's contention that the President was free to call witnesses before the House, but that the House did not have the time to do so, or to call any witnesses?

Mr. Counsel RUFF. Mr. Chief Justice, I think it is important to understand the reality of what is going on in the House. Most of you know something of it by simply the virtue of press coverage. But let me tell you what it was like from the perspective of the President.

From the very first moment when we began to speak with representatives of the Judiciary Committee—whether senior staff or the chairman, who is always gracious—the one thing we said was, "Please tell us what we are charged with, please." And we went from Mr. Schippers' extensive opening discussion of 15 possible violations of law to an ever-shifting body.

It wasn't until I was within literally a few minutes of completing my testimony on December 9 that we were ever honored with anything that looked like a description of the violations that the President was charged with, and those came in the form of hard draft articles of impeachment.

I think, indeed, if you will all remember back—if any of you were watching that day—I was actually given a draft copy of those articles just as I was completing my testimony, and then they were snatched back because it was premature for the President's counsel at 4:30 in the afternoon on December 9 to know what the President was charged with.

One thing you generally like to know as a litigator in any forum, before you start thinking about producing exculpatory evidence, as we were asked to do, or thinking about calling witnesses, is to sort of know what you have to defend against. In any forum, whether it is criminal or civil or legislative, the accused generally has that right.

Beyond that, as you all know—indeed, as Mr. Manager HYDE has indicated—we were operating on a very fast track. We asked, for example, when the issue arose as to whether or not the staff of the committee would take depositions, whether we would be entitled to be present, because we knew that none of them was on the calendar to be called in any open hearing, and we were denied that opportunity, theoretically because under the policies of the committee it was not appropriate for the President's counsel to be present at the only opportunity that certain witnesses would ever have to testify under oath.

It seems odd to me, when you come right down to it, that we should be accused of failing in our duty, with the burden on the House Judiciary Committee to make its case and our right to respond, that the House, having determined never to call a witness who knew anything firsthand, we should somehow be charged with having to fit into this discovery process. Discovery is very different, as all of you understand, from calling a witness—whoever it may

be—in public, before the full Judiciary Committee, and having the opportunity to examine. We were excluded from whatever true discovery process might have been involved, and left only with this notion that, in the absence of any specific charges, we were to call witnesses to defend ourselves. I suggest to you that in any setting that we are used to, whether those of you who are litigators or those of you who are simple observers of the justice system, that is a very long process, indeed.

The CHIEF JUSTICE. This question is from Senator NICKLES to the House managers:

> Which of the President's statements not already discussed today do you believe to be of particular importance to the perjury charge?

Mr. Manager ROGAN. Thank you, Mr. Chief Justice. I thank the Senator for the question. I will keep one eye on the clock and stay within the 5-minute rule, so obviously I won't be able to give a comprehensive list of that which we submit to the Senate is perjurious. Let me try to get through at least one or two.

One example that I invite the Senate's attention to is the answers the President gave in the grand jury about his attorney using Monica Lewinsky's false affidavit. Bear in mind, again, the predicate facts for this. Judge Susan Webber Wright, in the deposition, had ordered the President to answer questions relating to whether he ever had sexual relationships with subordinate female employees in the workplace as Governor or as President, because that is fair game in any sexual harassment suit. Victims of harassment in the workplace are entitled to discover that information.

The President was able to get Monica Lewinsky to file a false affidavit in the Jones deposition. And when that affidavit was in hand and filed, as soon as the attorney for Paula Jones asked the first question about Monica Lewinsky, the President's attorney, Mr. Bennett, put forth that affidavit and objected to the attorneys even asking the question. He said, "There is no good-faith belief that this question should be asked because of the affidavit." And the President did absolutely nothing to correct the record.

When this came up in the grand jury, the President was asked about the affidavit and the statement that Mr. Bennett made to Judge Wright that "there was no sex of any kind, in any manner, shape or form." And the attorney, Mr. Bittman, at the grand jury, referred to that and said to the President, "That statement is a completely false statement," and asked the President to explain. This was the President's answer:

> It depends on what the meaning of the word "is" is. If the—if he—if "is" means is and never has been, that is not—that is one thing. If it means there is none, that was a completely true statement.

Then the President went on to say:

> I was not paying a great deal of attention to this exchange. I was focusing on my own testimony.

Rather than simply give a truthful and complete answer to the grand jury in their criminal investigation, the President gave a bifurcated answer that essentially invited the grand jury to accept one of two explanations.

Explanation No. 1: I wasn't paying attention to my attorney when he said that. I was busy thinking of other things.

Or, if you don't like that explanation: I was paying such specific attention to what my attorney was saying that I focused on the tense of what the word "is" meant—as if to suggest when Mr. Bennett said that there is no sex of any kind, he meant there was no sex that day because he was there being deposed before Judge Wright. Under either scenario, the President absolutely failed in his obligation to provide the grand jury conducting a criminal investigation into possible obstruction in the Paula Jones case—he failed in his obligation to tell the truth, the whole truth, and nothing but the truth.

You have seen the evidence just from the initial presentation. No. 1, when the President said he wasn't paying attention, that was negated by watching the videotape. The President was paying very close attention. Why was he paying such close attention? Because the fate of his Presidency hung on the answer to that question. This is the most important question in the President's political life. Is he going to have to disclose information that he thought would help destroy his Presidency?

You don't even have to accept the representation from the videotape to know the President testified falsely, because Mr. Bennett did us the favor of not asking us simply to rely on watching the President pay attention to the testimony. Mr. Bennett then read the President the portion of Ms. Lewinsky's affidavit in which she denied having a sexual relationship with the President, and he asked the President if Ms. Lewinsky's statement was true and accurate. The President said, "That is absolutely true."

On August 6, Monica Lewinsky, incidentally, testified before the grand jury, and she didn't play these games with the grand jury, like "it all depends what 'is' means," or "I wasn't paying attention." She was asked a straightforward question:

> Paragraph 8 of the affidavit says, "I have never had a sexual relationship with the President." Is that true?

Answer by Monica Lewinsky:

> No.

Mr. Chief Justice, I see my time has expired. I will be happy to invite additional questions relating to additional specific examples.

The CHIEF JUSTICE. This is to the President's counsel from Senator SCHUMER and Senator KERREY of Nebraska:

> Isn't it true that the alleged perjurious statements have changed in number and substance since the OIC first delivered its referral to the House, and that the referral, Mr. Schippers' presentation before the House, the majority report, the trial brief, and the managers' statements before this body contain different allegations of what constitutes the alleged perjurious statements?

Mr. Counsel CRAIG. Thank you, Mr. Chief Justice. The answer to that question is, yes. They were changing right up until the time we met, the very first day of this trial when Mr. Manager Rogan made his presentation. What he said when he described perjurious statements alleged against the President was different from what was appearing in the trial brief before. And that was the end of a long period of time where every time we heard what the allegations were, at least when it came to the issue of perjury, they changed.

There were allegations added; there were allegations subtracted. Two of the allegations that Mr. Schippers presented when he made his statement to the Judiciary Committee were withdrawn. So it was a process where we never had a chance to sit down, as you should in a very serious and fair and evenhanded exercise, and focus on what precisely it was that the President said in the grand jury that was perjurious.

As to the specifics of the allegation that we have been discussing just now, when I first opened this discussion, I said it is very important to look at the record. Do not allow anyone to misrepresent the record because you are setting up the President's statement and saying that is perjurious, when the President's statement may well be something very different in the record.

When Mr. ROGAN first made his argument on this issue, he misrepresented the record as to what the President said in this case. I tried to correct him about what the President actually said. He never claimed, at the moment these questions were being asked back and forth, that he thought about the current tense. Even as I was speaking, Mr. ROGAN was out talking to the television cameras, saying precisely the same thing. Now we have this same misrepresentation the third time.

I will say it one more time. He answered the question. He wasn't focusing on it. He answered that four times the same way. It was not a bifurcated answer; it was one answer. He was not paying attention at that particular moment. It moved very quickly; the moment was passed and they were into the judge talking and debating with the lawyers. That was his answer. There was no other answer.

Then, at the grand jury some 7 months later, he was read that statement by the special prosecutor. The question was, "And this statement was false, isn't that true?" The answer the President gave was that, well, in fact, it depends on the meaning of the word "is."

He didn't claim that that was what he was thinking at the time in the Jones deposition. He said very clearly, "I never even focused on that issue until I read it in this transcript in preparation for this testimony." It is on page 512, Mr. ROGAN. "I never focused on that issue until I read it in this transcript in preparation for this testimony." There was not a bifurcated answer. He answered directly. He wasn't focusing on it.

That is a problem we have had throughout this case when it comes to the perjury allegation. It was a problem we had with the earlier one. If you don't have the specific statement quoted, it is impossible to defend it. It is unfair.

Thank you very much.

The CHIEF JUSTICE. This question from Senator LOTT to the House managers:

> Do you wish to respond to the answers just given by the President's counsel?

Mr. Counsel ROGAN. Mr. Chief Justice, I am not sure if I wish to respond or I feel the need to respond. But in either event I will take advantage of the opportunity. I thank the Senator for posing the question.

Try as they might, the facts are clear. The President, in his August deposition, attempted to justify away, attempted to explain away his perjurious conduct on January 17 when he was deposed. And I am not going to stand and quibble with Mr. Craig over this beyond what was already noted.

What I prefer to respond to is the bigger question that the White House attorneys have raised on a number of occasions—the idea that the President has been treated unfairly because he hasn't had sufficient notice as to what the allegations are against him.

Contemplate that for just one moment. Because, were that to be true, the President of the United States would have to be not a human. He would be an ostrich with his neck so far down in the sand—that which every schoolchild now in America knows, that which every person in America with a television or a radio or Internet access knows, and is obvious to everybody which they claim is not obvious to the President.

When the President of the United States testified at the deposition and before the grand jury—that brought us into late August of 1998, about a month after that—the Office of Independent Counsel filed a report. The binder was about 445 pages. The written document was a little more than 200 pages. But within the four corners of that report are all of the allegations, are all of the facts, and all of the circumstances that were forwarded to the House of Representatives for review. The House Judiciary Committee, specifically at the request of the White House and at the request of our Democrat caucus, did not go beyond the four corners of Judge Starr's report. Not only did the President have the benefit of Judge Starr's report, he also had the benefit of the written report from the House Judiciary Committee—same facts, same circumstances, nothing changed.

And, by the time we came to the Senate to try this case, the President had the benefit of the resolution passed by this body that said at the initial presentations "we will not go beyond the record already established"—the record that was established in the Office of Independent Counsel report, in the committee's report, and in our hearings. For a party to be aggrieved, as the White House counsel suggests, to have been given no notice, it is amazing to me how within minutes of Judge Starr's report being filed they had already filed a response. I believe there were two supplemental responses within 48 or 72 hours. They have always beaten us to the punch on the response. They have an army of lawyers here able to stand up on a moment's notice and respond. I just do not understand how they can make the case fairly that this is all now a product of a surprise; that they have not been given a proper opportunity to review the facts. They have seen these facts since Judge Starr submitted his report to Congress some 5 months ago. The facts haven't changed. The circumstances haven't changed. The quotations haven't changed. The transcripts haven't changed. Nothing has changed except their attempt to wiggle out from under the truth.

The CHIEF JUSTICE. This question is from Senators BOXER, SCHUMER and KOHL to the President's counsel:

To the best of your knowledge, has the United States Department of Justice ever brought a perjury prosecution where the alleged perjury was inferred from the direction in which the defendant was looking?

Mr. Counsel RUFF. Mr. Chief Justice, the answer is, not to my knowledge. I will not go further than that because somebody in the army of people on the other side might dodge one up, but I doubt it very much.

If I may impose on the kindness of the authors of that last question, I will take just a moment to comment briefly on Mr. Manager ROGAN's rejoinder to our response to whatever—particularly because Mr. Manager ROGAN has been a judge, prosecutor, and others have as well, it does seem mildly odd to me that the answer to the question your charges aren't known or are vague is, look at that pile. You will find them right in there. You fellows, you guys did a good job responding to what you could. So you must be perfectly well prepared to defend against whatever charges we bring. I don't think there is a judge anywhere in the United States, from the highest court or the lowest court, who would accept either explanation from a prosecutor.

The CHIEF JUSTICE. This question is directed to the House managers by Senators HATCH and BURNS:

The President's lawyers cite in their brief Professor Michael Gerhardt for the proposition that for an act to be impeachable there must be a nexus between the misconduct of an impeachable official and the latter's official duties. But isn't it true that Professor Gerhardt also stated that impeachment may lie for conduct unrelated to official duties if such conduct is outrageous and harms the reputation of the office?

And this citation is to the testimony of Mr. Gerhardt.

Would the House managers care to respond to this?

Mr. Manager CANADY. Mr. Chief Justice, Members of the Senate, I do appreciate the opportunity to respond to this point. I think this is a very important point.

I have a great deal of respect for Professor Gerhardt. He has said a number of different things on this subject. But the point in the question is directly on point.

I would also like to quote something else that Professor Gerhardt has said that I made reference to without specifically naming him as the source in this statement which I gave to the Senate on Saturday.

He said in a law review article, which he wrote a few years back:

There are certain statutory crimes that if committed by public officials reflect such lapses of judgments with such disregard for the welfare of the state, and such lack of respect for the law and the office held that the occupants may be impeached and removed for lacking the minimal level of integrity and judgment sufficient to discharge the responsibilities of office.

I believe that what Professor Gerhardt makes reference to there is exactly what we have before the Senate in this case. What we have before the Senate in this case is a case where the President of the United States has engaged in a course of conduct involving violations of the criminal law. By doing so, he has evidenced a lack of respect for the law, that demonstrates a lack of the minimal level of integrity that we are entitled to expect of the Chief Executive of the United States, of the person who, under our system, is

given the preeminent responsibility to take care that the laws will be faithfully executed.

The CHIEF JUSTICE. This question is from Senator DODD to the counsel for the President:

> Given the election of a President of the United States is the most important and solemn political act in which we as citizens engage, how much weight should the Senate give to the fact that conviction and removal by the Senate of the President would undo that decision?

Mr. Counsel RUFF. That question, of course, goes right to the heart of what the framers were thinking, and the standards that I suggest every sensible analyst of this problem has arrived at, whether they might be called supporters or opponents of the President. There is one critical issue that everyone has to address, which is that removal and undoing the will of the people.

Mr. Manager GRAHAM acknowledged that that's what we were all about here, whether we should undo an election. But if you go back to the very basic debates of the framers in 1787, and you recall both Mr. Manager CANADY and I talked about the moment in time in which it was suggested by Mr. Mason that perhaps the scope of the standard for impeachment could be broadened, and the response made then and clearly the principle underlying everything that the framers spoke about in 1787 was: We cure almost all our problems with an elected official through the electoral process.

And even if you look at what President Ford had to say 29 years ago on the subject, which I also cited to you as he spoke about the difference between judges and Presidents, he said for the House to impeach and the Senate to remove the President or Vice President as opposed to a judge in midterm would require proof of the most serious offenses, and we know that those most serious offenses, the only ones the framers contemplated as a basis for overturning the will of the people, were those that, as the minority said in 1974 in its report on the subject, were a danger to the state—a danger to the state. That is all that can justify overturning the voice of the people.

The CHIEF JUSTICE. This question is from Senator LOTT. It is addressed to the House managers:

> Didn't the framers of the Constitution understand in 1787 that the conviction and removal from office of a President would, under the system they devised, reverse the result of a national election by elevating, not a President's Vice Presidential running mate, as we would do today, but the person who had received the second highest number of electoral votes?

Mr. Manager HYDE. Mr. Chief Justice, the statement has been made with some fervor that if the President were removed upon a finding of conviction of the articles or an article of impeachment, it would reverse a national election. I just respectfully say that is not true. The election is provided for in the Constitution and so is impeachment. They are processes of equal constitutional validity. And should the Senate remove the President, Bob Dole will not become President, Jack Kemp will not become Vice President, but Mr. GORE will move up to be President, and the same party, the same programs, I dare say, will continue. It will not reverse an election; it will fulfill a constitutional process that our Founding Fathers were wise enough to provide for.

The CHIEF JUSTICE. Senator EDWARDS asks the House managers:

Are there any statements contained in the exhibits used during the managers' presentations or omissions from those exhibits that you believe, in the interest of fairness or justice, should be corrected at this time? If so, please do so now.

Mr. Manager BUYER. Mr. Chief Justice, with regard to our own exhibits?

The CHIEF JUSTICE. Perhaps I should ask Senator EDWARDS.

Mr. EDWARDS. Yes, Mr. Chief Justice, with regard to their exhibits.

Mr. Manager HUTCHINSON. Mr. Chief Justice, I would be happy to take advantage of the 5 minutes, but I have talked to the other managers and we are not aware of any corrections that need to be made on any of our exhibits we have offered to the Senate.

Mr. KERRY addressed the Chair.

The CHIEF JUSTICE. The Chair recognizes the Senator from Massachusetts.

Mr. KERRY. I simply ask whether or not that answer was in fact fully responsive to the question. I believe the question also asked whether or not there were any omissions.

The CHIEF JUSTICE. The Parliamentarian advises me this is a nondebatable period and the inquiry is out of order, and I so rule.

This is from Senator ROBERTS. It is directed to the House managers.

Given the fact that the White House characterizes the assistance that Monica Lewinsky received as "routine," does the record reflect that any other White House interns other than Monica Lewinsky received the same level of job assistance from Vernon Jordan, John Podesta, Betty Currie, and then-Ambassador Richardson?

Mr. Manager MCCOLLUM. Mr. Chief Justice, if I might, as far as we know as House managers, in the record the only comments about assisting anybody else other than Monica Lewinsky, of any nature, were made in testimony by Vernon Jordan. He did assist other people. But I don't believe there is anything, to the best of our knowledge and recollection—of course, we have a lot of paperwork here—that he referred to assisting another intern or anyone in a like position. And certainly there was no indication that the kind of intensity of that assistance occurred in the kind of manner in which the proceedings did with developing her job opportunities, that is, somebody in this direct involvement with the President, or certainly nobody with a close relationship and interest on the part of the President. There certainly was nothing in the record to show that, and that is, of course, central to this entire case as far as the job search part of this obstruction of justice is concerned.

Thank you.

Mr. ROBERTS addressed the Chair.

The CHIEF JUSTICE. The Chair recognizes the Senator from Kansas.

Mr. ROBERTS. I had directed that question, sir, to the White House counsel. It was my intent to direct it to White House counsel. I do not know what the proper procedure would be at this time.

The CHIEF JUSTICE. Is there any objection to the White House counsel answering the question at this time?

Without objection, the White House counsel may answer.

Mr. Counsel RUFF. Thank you, Mr. Chief Justice. This may be a moment worth noting in the proceedings because in essence I think we are in agreement with Mr. Manager MCCOLLUM.

I would perhaps only do this, and that is, to note with some greater emphasis Mr. Jordan's testimony, which we will be glad to highlight if we have another opportunity here, that indeed he has regularly and frequently assisted young people, and not-so-young people, in finding jobs.

Again, I couldn't tell you whether any of them had been an intern at any time. I would only note that, of course, Ms. Lewinsky was not an intern at the time Mr. Jordan was helping her, but rather was an employee of the Pentagon.

But beyond that, and perhaps with somewhat greater emphasis on Mr. Jordan's emphasis on behalf of young people in the city, I am in essential agreement with Manager MCCOLLUM.

The CHIEF JUSTICE. This is a question from Senators DODD and LEVIN to the House managers:

On page 11 of House committee report accompanying H. Res. 611, the report states that Judge Susan Webber Wright issued her order "on the morning of December 11th." Will the managers now acknowledge that the report was factually incorrect? Yes or no?

Mr. Manager HUTCHINSON. Thank you, Mr. Chief Justice. If I look back at the facts of this—of course, I have explained earlier today that the action on the 11th was initiated or triggered by the witness list that came in on December 5, that the President knew about it at the latest on December 6.

On the 11th, Judge Wright entered an order in that case which allowed the Jones lawyers an opportunity to ask questions about the prior relationships with other Federal employees or State employees.

Mr. DODD addressed the Chair.

The CHIEF JUSTICE. The Chair recognizes the Senator from Connecticut.

Mr. DODD. Mr. Chief Justice, as one of the authors of the question, a yes or no answer was requested and I object to the answer.

The CHIEF JUSTICE. The Chair has not tried to police the responsiveness of the answers to the questions, so I am going to overrule that objection.

Mr. Manager HUTCHINSON. I am not trying to be evasive at all to the Senator, but I did want to lay the groundwork for this and also to get my thoughts so that I would be as accurate as possible.

The order that Judge Wright entered was on December 11. I do not know the precise time. I believe it was in the afternoon that it was entered, and it was followed by the telephone call with the participants. So I believe that it was entered in the afternoon of the 11th, and not in the morning of the 11th.

And, of course, that was not in my presentation. My presentation referred to the order being entered on December 11, and that the action on the 11th, of course, was triggered by the witness list on December 5.

I think that completely answers that question. If there is some other—I would be happy to respond to anything more specific on that issue.

The CHIEF JUSTICE. This question is directed to the House managers from Senators DOMENICI, FRIST, MCCAIN and WARNER.

What is the historical significance and legal import of taking an oath for performance in public office? What is the historical significance and legal import of taking an oath to tell the truth in a legal proceeding? Please discuss whether oath-taking in such circumstances is a public matter.

Mr. Manager HYDE. Mr. Chief Justice, Members of the Senate, the taking of an oath is a formalization, a solemnization of truth. You call upon God to witness to the truth of what you are saying. In the long march of civilization, the oath has taken the place of trial by fire, trial by combat, trial by ordeal. It says, in the most sober way: You can trust me. You can believe in me. It is verbal honesty. Our legal system depends on it and our justice system depends on it. The oath underscores our humanity. The oath is an aspect of our sacred honor.

The CHIEF JUSTICE. This is from Senator KERRY of Massachusetts to the counsel for the President:

Is it fair to say that the articles and manager presentations stress the Jones perjury allegations rejected by the House, because they cannot credibly, on the law, satisfy the elements and argue perjury in the grand jury investigation?

Mr. Manager RUFF. Mr. Chief Justice, I am a little bit troubled at answering that question, not because I don't feel strongly about what the answer is but I do not want to suggest in any way that the motivation of the managers is less than professional and appropriate. But I do think that, indeed, they know, as they think through the proof that they have or that they even might ever contemplate, that the President of the United States, when he began his grand jury testimony by making the most painful admission a human being could ever make, and thereafter did his best—albeit in the face of tough and probing and repetitive questioning for 4 hours—did his best to tell the truth.

That they had a very difficult, indeed virtually impossible, task to persuade any dispassionate trier of fact and law that he had intentionally given false testimony, and you can see that evidenced, I think most clearly, if you look at some of the first allegations made as to what constitutes perjury—things like the use of the words "on certain occasions" or "occasionally" to describe a battle over whether 11 or 20 or 17 fit within that description. It does seem fair to say that they would not be fighting those battles in this Chamber if they had any real confidence in their cause on article I, and thus they do seek, for whatever tactical or other purpose, to try to bring in those things which so many of their colleagues rejected out of hand in the House of Representatives.

The CHIEF JUSTICE. This question is directed to the House managers from Senators HATCH, THOMPSON and DEWINE:

In her presentation to the Senate, Ms. Mills emphasized that Ms. Lewinsky testified on ten different times about the subject of gifts. Did she ever testify that the President told her that she must turn over the gifts because that is what the law requires?

Mr. Manager MCCOLLUM. Mr. Chief Justice, in response to that question the answer is no, she did not. As a matter of fact, that was and is the central point on the part of the gift question. At no time, she says, did the President instruct her to turn those gifts over. I think that is a telling point. In fact, it is a telling point throughout the entire process of the scheme and all the things that happened and why you have to follow, in my judgment, Senators, the issue of this whole process through the scheme that was devised at the beginning, all the way to the end.

The President was going to ultimately lie to conceal from that court in the Jones case, the truth of his relationship with Monica Lewinsky and, therefore, he had to set it up for the affidavit, the gifts, et cetera. At no point in time, she says in her testimony, did he ever ask her to come clean. Until the time the affidavit was discussed, on the night of December 17, he never suggested she tell the truth there. If you remember we put that up here several times to you. Even though he may not have directly told her to lie, he certainly gave her every indication, she said, from the standpoint of the background that they had had before and what he said that night about the cover stories.

And with regard to the gifts, the same thing is true. She gave him an opportunity on the day of December 28. Whether there are 10 statements or however many there might be—and they say there are 10; I trust the judgment of the White House counsel—there were 10 different statements, the most significant of which, of course, is the grand jury testimony she gave on the subject of what happened that day when she discussed the gifts with the President because that is when her recollection had been best refreshed. She had been over it a lot of times. She had much preparation for that, and I submit to you that barring bringing her in—which we of course suggest you do, and let us ask her to confirm all of this again—you must assume the logical thing to do is to assume the grand jury testimony, the most perfected testimony you have, is the most accurate and most reliable, and on that occasion particularly she emphasizes the fact that with regard to the gifts there certainly was no request by the President that she reveal those gifts.

Now, of course he says he did. He says he did later. But that is absolutely contradicted by her testimony.

The CHIEF JUSTICE. Senator REID of Nevada sends this question for White House counsel:

> Would you please comment on any of the legal or factual assertions made by the managers in their response to the previous question?

Ms. Counsel MILLS. There is, obviously, a conflict in the testimony between the President, who said he directed Ms. Lewinsky to turn over whatever she had, and Ms. Lewinsky's statements. I would just like to read to you, given the House managers' reference that we must credit her grand jury testimony, the version of her grand jury testimony, which you all will no doubt remember it as one of the ones I read to you that was never presented by the House managers, and that is on August 20, 1998, after the President had testified:

It was December 28th. I was there to get my Christmas gifts from him, and we spent about 5 minutes or so, not very long, talking about the case. And I said, "Well, do you think"—and at one point I said, "Well, do you think I should?" And I don't think I said, "Get rid of, but do you think I should put away, give to Betty or someone the gifts"—and he—I don't remember his response. I think it was something like "I don't know" or hmm or there was really no response.

On that same day when she was asked that same question, if it is her grand jury testimony that is to be addressed, she also said:

A JUROR. Now, did you bring up Betty's name or did the President bring up Betty's name?

The WITNESS. I think I brought it up. The President wouldn't have brought up Betty's name because he didn't—he didn't really discuss it.

All of those are in her grand jury testimony. So her grand jury testimony is the testimony that states he might not have given any response. So, to the extent the House managers' theory is that "Let me think about it" leads to obstruction of justice, her grand jury testimony does not state that.

The CHIEF JUSTICE. Senators SPECTER, HELMS, ABRAHAM, ASHCROFT, and STEVENS direct this question to the President's counsel:

President Clinton testified before the grand jury that he was merely trying to "refresh" his memory when he made these statements to Betty Currie. How can someone "refresh" their recollection by making statements they know are false?

Ms. Counsel MILLS. I think one of the things I tried to address in addressing what the President's testimony was with respect to his conversation with Ms. Currie was obviously he was understandably concerned about the media attention that he knew was impending. And in particular, as he walked through the questions, he was thinking about his own thoughts and seeking, as I think I talked about, concurrence or input or some type of reaction from Ms. Currie.

I think in making those statements, he was asking questions to see what her understanding was based on some of the questions that had been posed to him by the Jones lawyers, because some of them were so off base. And so he was asking from Ms. Currie essentially what her perception was, what her thoughts were.

I think as you walk through each one of those questions, he was expressing what his own thoughts and feelings were with regard to this and was seeking some concurrence or affirmation from her. I think he was agitated. I think he was concerned. He knew what was going to happen, and I think that is why he posed the question in the way that he did.

The CHIEF JUSTICE. A question from Senator BAYH to counsel for the President:

Can you comment on the importance of "proportionality" to the rule of law?

Mr. Counsel RUFF. How much time do we have? Thank you, Senator.

I think proportionality, in all its many guises, is an issue that has given us some pause, going well back into the investigative phase of this matter, and I think many who have watched and who have made their lives and careers as professional prosecutors, indeed many who have been criminal defense lawyers or just plain sensible citizens watching, have asked whether the resources and

the energy and the time devoted to this matter and the manner in which it has been treated at every stage before it ever got to the House of Representatives does, in fact, reflect an appropriate assessment of the conduct being investigated and the seriousness of the conduct, which is not ever to suggest that we condone perjury or obstruction of justice.

We all recognize, if those offenses have been committed, they are worth pursuing. But one only need look at the testimony and the professional prosecutors who testified before the Judiciary Committee to get a sense of what the world of professional prosecutors would do faced with these kinds of allegations in this kind of setting, and that really is the key: How many prosecutors would ever reach into the middle of an ongoing civil litigation and bring these kinds of charges?

The proportionality, obviously, has other implications and certainly goes right to the heart of the role played by this body. That is, what is the proportional response to whatever you think of the President as a man, whatever you think of his conduct. Even if you should conclude—although we do not believe you should—that he violated the law in some respect, what is the constitutionally proportional response to your judgment. And there you go right back to the essence of what the framers were talking about, which is responding with the ultimate sanction only when the ultimate problem is posed to you.

I suggest, as I have on too many occasions, I fear, that if that is the proportionality question you are asking—and all must at some point ask that question—the answer has to be clear, that no one ever thought in 1787 and, I suggest to you, in the intervening 212 years that it would be a proportional response to the conduct alleged here to remove a President.

The CHIEF JUSTICE. The Chair recognizes the majority leader.

ORDER OF PROCEDURE

Mr. LOTT. Mr. Chief Justice, I believe we have reached a point where we can take a break. I think we have had responses to approximately 50 questions today. Now we will have a chance to assess, on all sides, what additional questions might be needed to be asked tomorrow. I remind my colleagues that we are scheduled to resume at 10 a.m. on Saturday.

NOTICE OF INTENT TO SUSPEND THE RULES OF THE SENATE BY SENATOR HUTCHISON, SENATOR SPECTER, SENATOR LIEBERMAN, SENATOR HAGEL, SENATOR COLLINS, AND SENATOR SNOWE

In accordance with Rule V of the Standing Rules of the Senate, I (for myself and for Mr. SPECTER, Mr. LIEBERMAN, Mr. HAGEL, Ms. COLLINS, and Ms. SNOWE) hereby give notice in writing that it is my intention to move to suspend the following portions of the *Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials* for the final deliberation on the articles of impeachment of the trial of President William Jefferson Clinton:

(1) The following portion of Rule XX: ", unless the Senate shall direct the doors to be closed while deliberating upon its decisions. A motion to close the doors may be acted upon without objection, or, if objection is heard, the motion shall be voted on without debate by the yeas and nays, which shall be entered on the Record"; and

(2) In Rule XXIV, the phrases "without debate", "except when the doors shall be closed for deliberation, and in that case" and ", to be had without debate".

ADJOURNMENT UNTIL 10 A.M. TOMORROW

Mr. LOTT. If there is nothing further, I move we adjourn, Mr. Chief Justice.

The motion was agreed to and, at 5:49 p.m., the Senate, sitting as a Court of Impeachment, adjourned until Saturday, January 23, 1999, at 10 a.m.

106TH CONGRESS—FIRST SESSION

United States Senate

Impeachment Trial of the

PRESIDENT OF THE UNITED STATES

SENATOR _____

QUESTION FOR:

☐ COUNSEL FOR THE PRESIDENT

☐ HOUSE MANAGERS

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SIGNATURE

Sample question card used by Senators

SATURDAY, JANUARY 23, 1999

[From the Congressional Record]

The Senate met at 10:05 a.m. and was called to order by the Chief Justice of the United States.

TRIAL OF WILLIAM JEFFERSON CLINTON, PRESIDENT OF THE UNITED STATES

The CHIEF JUSTICE. The Senate will convene as a Court of Impeachment. The Chaplain will offer a prayer.

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Almighty God, You have taught us to seek and maintain unity. You've also taught us that this unity is so precious that we should be willing to sacrifice anything in order to maintain it—except the truth. Help us to affirm the great undeniable truths that twine the bond of oneness: We are one Nation under Your sovereignty; our patriotism binds us together inseparably; our commitment to the Constitution is unswerving. In these bonds that cannot be broken, this Senate has been able to deal with the arguments, issues, and opinions of this impeachment trial. Continue to inspire the Senators with civility as they work through answers to the questions raised today.

Refresh and rejuvenate those who may be weary or burdened. Dear God, preserve the unity of this Senate for its future leadership of our beloved Nation. In Your holy Name. Amen.

The CHIEF JUSTICE. The Deputy Sergeant at Arms will make the proclamation.

The Deputy Sergeant at Arms, Loretta Symms, made proclamation as follows:

Hear ye! Hear ye! Hear ye! All persons are commanded to keep silent, on pain of imprisonment, while the Senate of the United States is sitting for the trial of the articles of impeachment exhibited by the House of Representatives against William Jefferson Clinton, President of the United States.

THE JOURNAL

The CHIEF JUSTICE. If there is no objection, the Journal of proceedings of the trial is approved to date.

Pursuant to the provisions of Senate Resolution 16, there are 11 hours 54 minutes remaining during which Senators may submit questions in writing directed to either the managers, on the part of the House of Representatives, or the counsel for the President.

The majority leader is recognized.

Mr. LOTT. Thank you, Mr. Chief Justice.

And thank you, Chaplain, for your opening prayer. I know we all listened and appreciated the admonitions that were given in that prayer.

ORDER OF PROCEDURE

I want to say, again, I appreciate the participation of all the Senators yesterday. Fifty questions were asked, I think a lot of good questions, and obviously good responses. We have a considerable amount of time left for questions. But, again, it is our intent to go today as long as the Senators feel that they have a need for further questions. It is up to 16 hours; it doesn't require 16 hours. So I think we should go forward and try to ask the needed questions, and then get a sense of where we are as we go through the day.

But at any rate, it would be our intent not to go later than 4 p.m. We hope to take a 1-hour lunch break sometime around 12 or 12:30, but it will depend on how the questions are going. We will also take a break here in an hour, hour and a half, something like that.

Following today's session, the Senate will reconvene on Monday at 1 p.m. and resume consideration of the articles of impeachment. All Members will be notified of the details of Monday's schedule, and beyond that, once we have had an opportunity for a consultation between Senator DASCHLE and myself and we get a feel for exactly what Senate Resolution 16 provides in terms of activities on Monday and Tuesday. In a continuing effort to make this as bipartisan and as fair as possible, you will note yesterday while we alternated back and forth, some of the questions were directed from this side to the President's counsel and the reverse. I am sure that will happen again some today. We began the first question yesterday and you concluded; so today we would reverse that. Senator DASCHLE will ask the first question and then we will go through the process until we complete those questions, with us ending with the last question sometime today.

With that, Mr. Chief Justice, I yield the floor.

The CHIEF JUSTICE. This question is directed to the House managers from Senator REID of Nevada.

Would you please tell us whether you provided notice to counsel for the President, or to any official of the United States Senate, of the managers' discussions with the Office of Independent Counsel regarding an informal interview of Ms. Lewinsky, and the intention of the Office of Independent Counsel to file a motion in court to compel Ms. Lewinsky to meet with the managers? If you provided no such notice to counsel for the President or the Senate, please tell us why not.

Mr. Manager BRYANT. Mr. Chief Justice and Senators, distinguished colleagues, no, the answer to your question. I am not aware of any such notice that was provided as described in the question.

I would like to make some clarification on this in terms of the witness, Monica Lewinsky—potential witness. As we have been in an evolving discussion over the last few weeks in terms of if we are allowed to call witnesses by the Senate, who those witnesses might be, what our list might look like, obviously, the name of Monica Lewinsky comes up as a potentially very important witness to these proceedings.

As many of us in this Chamber have had experience in the law, we very much would like to talk to some of these witnesses. The core group that we have considered, however, are, in essence, in the White House control; they are either employed by the White House or close friends and associates of the White House. I am

sure the White House, with the attorneys, would be very willing to cooperate with us in making those people available.

However, Ms. Lewinsky presents a very unique situation in that she is geographically some other place. I am not sure where she is—Los Angeles, New York, maybe Washington. But she has attorneys we have to deal with. It would be very critical, as any attorney in this body knows, that before you actually call a witness, and a witness of that importance to this proceeding, that before you produce her for that testimony, that you talk to her. It was intended to be a conversation to discuss it with her.

I have personally not seen the immunity agreement that she has, but we understand there is a cooperation proceeding and that that agreement is between her, her attorneys, and the independent counsel, the OIC—not Congress, not the managers, not the Senate. So we have no duty, no legal standing, as I understand it, to go in and enforce that agreement, were she not to want to meet with us and cooperate pursuant to the terms of those agreements, to the agreement.

We did contact the OIC to arrange that meeting, and once we understood that the attorneys did not want to cooperate and furnish their client to meet with us, we asked the OIC to pursue, further, the effort to have Ms. Lewinsky come in and meet with us on an informal basis as, again, anyone would do in preparation for calling a witness at a trial.

Thank you.

The CHIEF JUSTICE. This is a question from Senators FITZGERALD, HATCH, Mr. SMITH of Oregon, and Senator THURMOND, directed to the House managers.

How do you address the White House's argument that removal is a disproportionate remedy for the alleged acts of perjury and obstruction of justice and should there be any particular concern about establishing a precedent that a President can commit felonies while in office and remain President of the United States?

Mr. Manager BUYER. I think the proportionality question yesterday was very good in that there is a psychology to be used in judicial decisions. I think there are different factors that will influence that decisionmaking process and the ideals that you, as a sitting judge and juror, will use to strive to attain them. It is important, I think, also, to have reasonableness and just solutions if you are going to individualize the case, as some may hope to do.

I think as a society, if you take a step backward, we are kind of caught in two diverse trends at the moment. You have one trend whereby judges like to seek individualized solutions to particularized cases; and the other trend is we will apply the law to individualized cases.

So, let me give you two best examples of both of those. With regard to the best example of individualized solutions to a particular case would be our juvenile justice system. That is where the court would come in and use a variety of means because reformation is, in fact, the goal, and that is what we do in the juvenile court system.

As a side note of that, I think in society, with regard to—it could be an act of a firing, it could be an administrative hearing for removal, it could even be a Governor who had an employee who had an illicit affair and it was a political appointee and that Governor

decided, maybe he decided applying the proportionality that he remove his own political appointee for having an affair. So the individualization can occur out there.

The other example I will comment on is the justice according to law, and that other trend out there caught in our society—a legislature is not only here in Washington but across in our State jurisdictions; you have legislatures that are beginning to take some of the decisionmaking processes away from judges and they are saying, specifically, in Federal sentencing guidelines, as an example, that if in fact a person is convicted of a particular crime or possession of cocaine, the legislature is now telling these judges exactly: This is, in fact, what your sentence will be.

So, we are kind of caught, I want you to know, as you are sitting as judges and jurors, in this diverse trend that is occurring in our society. I know as you listen to lectures even from the Supreme Court Justices, they are well aware of these trends, and so you are sitting and you have to come in your own conscience on how best to make that particular decision. I will note, though, that we have stressed the latter. We have stressed that the rule of law and its importance to our society not only to serve the public and social interests, but you are the guardian. When, in fact, there are crimes against the State, who is there to serve the public interest? Especially if, in fact, it is the President, the Vice President, a judicial officer, or other civil officers. Here where you have the President of the United States who has been accused of perjury and obstruction of justice, which are crimes against the State, and as Blackstone said, "are side by side with bribery," who is the guardian, then, of the public interest? So in the question of proportionality, it is you; it is you.

So when Mr. Craig began by arguing that this trial is not about vindicating the rule of law, that only criminal courts are charged with that duty, I would respectfully submit that the President's counsel is confusing the punishment of a particular criminal case or controversy in a court with your duty as Congress to ensure that future officers entrusted with power granted by the people may not, by their offices, eviscerate the proper administration of justice which is a cornerstone of our Republic.

I now yield to Mr. GRAHAM.

Mr. Manager GRAHAM. I know I have a minute. Great minds can differ on this one: Can you have a high crime, and for the good of the nation removal is not appropriate? I was asked that yesterday, and I kind of wanted to make a case about why I think this is not true. This is a great question.

The problem we have here is that you run into the judge cases. When you find that a judge perjured himself, you remove the judge. The President is different than the judge; I will certainly concede that. But we don't want, I think, in the use of proportionality, to create a standard that doesn't make any sense, that confuses people. The law loves repentance. Baptists love repentance. I am a Baptist. In my church, everybody gets saved about every other week. The idea that if you will come forward and admit you are wrong, you will get a different result, is loved in the law.

Another thing to consider about proportionality is the impact on society. I think you should consider that. I think very much you

should consider, even if this is a high crime, the impact on our society, if you decided to make the ultimate punishment. The death penalty of a political crime is removal from office. I started that train of thought 3 months ago. Impeachment is equivalent to the political death penalty. Every felony doesn't allow you to have a death penalty. What I hope you will be able to do, as a wise body, is not leave this confusion behind—whether or not it is a crime.

Ladies and gentlemen of the Senate, it can be a high crime, and you then have to decide the impact on society. But if you leave us confused about whether or not this is a crime, the impact on society is far greater than if you make the decision that it is a crime, but proportionally it is not what the death penalty would call for. It would not be a political death penalty case. Thank you very much.

The CHIEF JUSTICE. This question is from Senator LEAHY to the House managers:

Did any of the managers consult with any Member of the Senate before seeking aid from Kenneth Starr to speak with Ms. Lewinsky? Did you discuss whether this violated the Senate's 100–0 vote on trial procedure?

Mr. Manager MCCOLLUM. Thank you, Mr. Chief Justice. The question is a valid question to ask. We did not consult with any Senators about this. We don't think that what we wanted to do, to talk to Ms. Lewinsky, has anything to do with the rule you passed. We don't want to violate those rules and we don't think we have.

As anybody who knows, if you have a witness that you are going to produce, you have a right to prepare that witness. It is as plain and simple as that.

I have practiced a lot of trial law before I came to Congress, and a number of you have. If you are going to have a deposition given, it is going to be your witness. You are going to go down and try to talk to that witness and prepare that witness. You have a right and obligation to do that. It has nothing to do with the formal proceeding of taking the deposition, which is covered by the rules that you have passed, as to how and when depositions will be taken, and it has nothing to do with the issue of her testimony actually here, where the opposing counsel would have a right to be present. It has everything to do with the right of anyone to prepare their witness, to get to know their witness, to shake hands, say hello, to put a face on that. It is normal practice to do this.

We see in no way how that abrogates this rule, or in any way violates what you have set forth. As a matter of fact, we think we would have been incompetent and derelict as presenters of the witnesses, if we get a chance to present them, if we couldn't talk to her. We tried to do this some time ago. We suggested to her attorneys that it would be appropriate to quietly have this discussion, to meet her, as you normally would. I think they were apprehensive. They wanted a court order, I guess, to force this to occur, and that is why we eventually have gone to do that.

Thank you.

The CHIEF JUSTICE. This question is from Senators LOTT and THURMOND to the House managers:

Please give specific examples of conflicting testimony or an incomplete record where the calling of witnesses would prove beneficial to the Senate.

Mr. Manager HUTCHINSON. Thank you, Mr. Chief Justice. Good morning, everyone. I want to echo what my colleagues have said—that we are trying to be prepared. We are trying to move through this process expeditiously. But we do believe that we need to call witnesses; and secondly, that we should be prepared, without any delay, to proceed forward in the event we are granted that opportunity.

One of the reasons that the calling of witnesses is important is because there exist conflicts in the testimony. The White House counselors, the President of the United States, has denied each and every allegation under the two articles that have been submitted to this body. I focused on the obstruction of justice, and each of the seven elements of the obstruction of justice has been denied by the President. This puts it all in issue.

For example, let's start with the issue of lying to the aides. The President said he was truthful with his aides, Mr. Podesta and Sidney Blumenthal. Yet, if you look at the testimony of John Podesta, where he says the President came in and denied having sex of any kind with Ms. Lewinsky and goes into the details of that, that is in direct conflict with the testimony of the President of the United States. The same thing is true of the testimony of Mr. Blumenthal versus the testimony of the President of the United States.

Another conflict in the testimony is between the President and Ms. Lewinsky—in a number of different areas. First of all, in regard to the gifts, the President said, "And I told her that if they asked for gifts, she had to give them." That is the President's testimony. Yet, Ms. Lewinsky says that in that conversation the President said, when asked about the gifts, "Give them to Betty." Then he says, "I don't know," or "Let me think about it." Again, that is a direct conflict between Monica Lewinsky and the President.

In regard to Monica Lewinsky, he was coaching her testimony or suggesting to her that "Maybe you can sign an affidavit," or "You can always say you were coming to see Betty, or that you were bringing me letters." This is the testimony of Monica Lewinsky. What does the President say regarding that? He said that he never talked to her about a cover story in a legal context. In other words, it is a denial of obstruction of witness tampering, in contrast to the testimony of Monica Lewinsky. Obviously, there is a conflict in the details of the relationship.

There is a conflict between the testimony of Monica Lewinsky and Vernon Jordan in three different areas. Ms. Lewinsky said she shared with Mr. Jordan some details of the relationship. Mr. Jordan says that was not accurate. Ms. Lewinsky says in a particular meeting that Mr. Jordan—where they discussed about notes she had been keeping, Mr. Jordan said, "Go home and make sure they're not there." But Mr. Jordan denies that.

In another area, on the affidavit, Ms. Lewinsky says that she brought to Mr. Jordan the affidavit, and he assisted in making some corrections. Mr. Jordan does not recall that. So there are conflicts between Ms. Lewinsky and Mr. Jordan.

There are conflicts between Ms. Currie and the President in regard to the coaching incident. Ms. Currie said the statements were made and taken in the sense that "the President wished me to agree with the statement." The President says, "I was trying to get

as much information as quickly as I could." Obviously, Betty Currie testified before the grand jury before the President did, and there were never any follow-up questions. I would want to ask her: What did you say in response? Did you provide any information that the President was soliciting at that particular moment, according to the defense he has asserted? So there is conflict there.

There is a conflict between the President and a witness that we would offer from the deposition. The President denies that he focused on what Attorney Bennett was stating in reference to the false affidavit. I believe that we can offer a witness—it could be in the form of an affidavit or deposition—that would testify that he was focusing, paying attention.

So there is clear conflict in the record that can only be established through the presenting of additional questions or additional witnesses.

The need for witnesses is so basic and fundamental to our truth-seeking system of justice in this country that words fail me in making the case that we should call witnesses and then you should permit it in this proceeding.

We are sympathetic totally with the timeframe and the time constraint of the U.S. Senate, and for that reason we will prepare our witness list, we will accommodate a quick session. The White House counselor said this is going to drag on for months. If it drags on for months, it is because they want it to drag on for months. We will do all that we can to end this in a timely fashion, and the American people and the U.S. Senate need to understand that.

Why are the White House counselors so concerned about witnesses? Many of these witnesses are friendly to them. We are in a truth-seeking endeavor, and I would respectfully submit that the calling of witnesses would help resolve the conflicts that I have recited.

The CHIEF JUSTICE. This question is from Senator DODD to the counsel for the President:

> Do you believe that a fundamental question of fairness and due process has been raised by the failure of the House managers to notify you of the proposed Lewinsky interview or by your exclusion from that interview? And do you wish also to respond to Mr. HUTCHINSON's comments?

Mr. Counsel RUFF. If I may, Mr. Chief Justice, I will use most of my time on the first part of that question and try to perhaps weave in a few comments on the second part.

I am not going to seek here this morning to vindicate the interests of this body; that is for others. But I do think it useful to speak for a bit about the interests of the accused, the President of the United States.

It is odd as I think we listen to the managers explain what they were seeking to do to put that in the context of what we know was actually happening here. It was suggested that they wanted to just have a conversation like any lawyer getting ready for a trial would want to have a conversation with a witness before he or she put the witness into a deposition or on trial—that it was sort of normal for a trial lawyer to do this.

I think one of the managers suggested they just wanted to say "hello" to put a face on it. And they even suggested that counsel for Ms. Lewinsky wanted a court order to force their client to tes-

tify. Well, as we will all see once the record is made available to everyone, that last point is sheer nonsense.

But I suggest that earlier suggestions that just a friendly little chat was all they were looking for is belied by the notion of what we have here is the managers using their "institutional role" to get the independent counsel to join with them and use the authority that he has under the immunity agreement to threaten Ms. Lewinsky with jail, to threaten her with violation of her immunity agreement, and opening up the prospect of prosecution if they do not meet in a friendly little conversation, just say hello, just like to meet you, gathering with the managers.

Can you imagine what that little conversation is going to look like, held in the independent counsel's office, with the people there who have the capacity to put Ms. Lewinsky in jail, while there is this friendly little conversation, just say "hello," normal everyday discussion between the trial lawyer and the witness he would like to get to know?

From the perspective of my client for the moment, putting aside the rules which you all agreed on as to how we ought to proceed, can we really say that is just normal, just OK, to have one side using the might and majesty of the independent counsel's office, threatening a witness with violation of an immunity agreement if she doesn't agree to fly across the country and meet for this friendly little chat? I think not.

I don't know whether I have a minute or two left. But on the issue of conflicts, this is, of course, something that has been the subject of much discourse over the last few days. Let me just take a couple of examples put to you by Manager HUTCHINSON.

On the issue of the statements made by the President, Mr. Podesta, and Mr. Blumenthal, there is no conflict in the testimony here. The President indeed said that he was trying to keep his aides from becoming witnesses. He even said that he didn't even remember his conversation with Mr. Podesta but he took as true—this is what he said to the grand jury—he accepted as true that Mr. Blumenthal said this is what that conversation sounded like. Mr. Podesta said that is what the conversation was. There was no conflict. The President indeed adopted in the grand jury what those people would say. And of course he didn't put them into the grand jury in order to repeat something or to mislead the grand jury as to their knowledge of what they told him. They testified truthfully in the grand jury when they recited their conversations with the President.

But I want to move just a second to something you have never heard before in the entire days that we have been sitting here. We heard little hints about how Vernon Jordan might be a liar because of what he said about December 11. All of a sudden just 5 minutes ago, this body heard for the first time he not only may be a liar about the job search, he may be a liar about destroying evidence. Words fail me.

The CHIEF JUSTICE. This is a question from Senator ABRAHAM to the President's counsel:

Is it your position that Ms. Lewinsky was lying in her grand jury testimony, her grand jury deposition, and her FBI interviews when she said that the President engaged in conduct with her that constituted "sexual relations" even under his narrow

interpretation of the term in the Jones deposition? Is it your position that she was also lying when she gave essentially the same account contemporaneously with the occurrence of the events to her friends and counselors?

Mr. Counsel CRAIG. Senator, our position is not that she is lying. Our position is that there are two different versions of what happened, and there is a discrepancy.

In my presentation to the Senate, I acknowledged that there was a disparity between what the President had recounted and what Ms. Lewinsky said happened when it came to recalling and reporting these specific rather graphic and intimate details concerning their activities. I pointed out that, with respect to other essential elements of the relationship, there was no disagreement that they acknowledge that there was a relationship, that they tried to conceal it. But I also suggested—and I suggest to you today—that not every disagreement, not every discrepancy, is the foodstuff or the subject of a perjury charge.

I also made the observation that perhaps this kind of conflict of testimony as to who touched who, when, where, and why, was not the kind of conflict that this institution would want to resolve through testimony on the floor. If you have any doubts about that point, I would suggest you read Ms. Lewinsky's August 20 testimony before the grand jury which is very complete and entirely and vigorously dedicated to eliciting every single gritty detail of what went on between them. I said also that I thought that this disagreement, this disparity, was of questionable materiality. Let me explain why.

On January 29, Judge Wright ruled that Ms. Lewinsky's testimony about her relationship with President Clinton was unnecessary and maybe even inadmissible; that she had had no information relating to the core issues of the case. She made that ruling after all the allegations about that relationship had been made public. And the judge knew what had been reported in the newspapers and what was generally understood about it at that point. She had been there when the President testified about this. And she concluded that Ms. Lewinsky's testimony was not required, at least for the Paula Jones case. In truth, Ms. Lewinsky was an ancillary or peripheral witness in the Paula Jones case. She had absolutely no firsthand knowledge about what happened in the Excelsior Hotel when Ms. Jones claimed that then-Governor Clinton made an unwelcome sexual overture to her. Ms. Lewinsky had nothing to add or subtract, no ability to testify about that issue.

So on the issue of the materiality to the Jones case as to the truth of what actually happened between them, it is clear it is of questionable, if any, materiality whatsoever. She was a peripheral witness on issues not having to do with the core issues of the case, and the case had no legal merit.

Please recall that the judge concluded that the case had no legal or evidentiary merit. Please also remember that the Jones lawyers, when they were asking these questions of President Clinton, presumably knew the answers to these questions about the relationship because they had been fully briefed the night before.

Now, as to the question of the materiality of this testimony and this issue of who touched whom, when, where and why, to the grand jury, let me just say this: The House managers claim that

one or the other must be lying because both cannot be correct. They argue that if you believe Monica Lewinsky on this issue, you must disbelieve Bill Clinton, and if you disbelieve Bill Clinton, you must conclude that he knowingly perjured himself when he denied under oath having this kind of contact with Ms. Lewinsky.

Now, this direct issue was addressed by the panel of expert prosecutors that we brought to testify before the Judiciary Committee, and they all agreed that this kind of issue would never be the subject of a perjury prosecution. I would urge you to go back and look at some of the testimony that they gave to the Judiciary Committee. They talked about the oath-on-oath issue, they talked about what is independent corroborative evidence and what is not, and they concluded that no reasonable, though responsible, prosecutor would bring this kind of case based on that kind of an issue.

We are not arguing with the managers about the law. We are not arguing with the managers about the disparity. We are talking about prosecutorial practices, what in reality would be a criminal prosecution, and I submit to you that no reasonable, no responsible prosecutor would bring this kind of a case based on that kind of evidence.

Thank you.

The CHIEF JUSTICE. This is a question from Senator DASCHLE addressed to counsel for the President:

> Do you believe that it is a requirement of due process and fairness that you be allowed to participate in the Lewinsky witness debriefing sought by the managers, and do you believe that the House would have asked for the same right if the White House had attempted to interview Ms. Lewinsky?

Mr. Counsel RUFF. Mr. Chief Justice, that question raises an interesting mix of issues, because I think in one respect the House managers are correct, that once the Senate determines that it is prepared to go forward—I trust it will not—but if it does determine that it is prepared to go forward in some way with respect to the depositions of witnesses, at that point, with the Senate having made that decision, it would be appropriate for both sides to seek a voluntary, consensual, typical opportunity to meet with any witness in a setting that doesn't involve having the prosecutor with life and death authority over that witness doing the debriefing or being present while you talk to the witness.

Thus, although I will take the opportunity of offering to sit in on any meeting between the managers and the independent counsel and any witness, because I would certainly like to know what the mood and the atmosphere of that process really sounded like, the issue here, I think, is not so much whether it would be nice to sit in on that meeting but whether there can be any hope for due process, fairness and opportunity for both sides, or certainly my side—I won't speak for the managers—to have an opportunity for a reasonable, fair and open discussion voluntarily with any witness who will talk with us, not—not to be too rhetorical about this—with the looming presence of the prosecutors sitting in the room with us.

As everyone who practices in this district knows, indeed, it is a matter of law that a prosecutor may never interfere with the access of any witness to defense counsel. I can't think of much more interference than being required to sit in the room with the prosecutor and with another prosecutor while that kind of discussion goes on.

So the answer is, fairness, no. But if it is my only opportunity to meet with Ms. Lewinsky, I will take it. But I trust that as a matter of due process it will not be.

The CHIEF JUSTICE. This is a question from Senators DEWINE, COLLINS and MURKOWSKI to the House managers:

With all of the conflicting testimony that exists on the record between Monica Lewinsky and Betty Currie, for example, how are we to resolve the questions of perjury and obstruction of justice without observing the demeanor of witnesses?

Mr. Manager HUTCHINSON. I do not think there is any way to resolve the conflicts in their testimony without calling witnesses. You can read the transcripts and you can look at those and you can try to determine whether there is any corroborating evidence, how you can believe it, make some of those kinds of evaluations. But particularly whoever you are looking at, whether it is Monica Lewinsky or Betty Currie, there are followup questions and there is the demeanor that allows you to determine who is telling the truth and who you believe.

And in contrast, Mr. Ruff tries to make the point that somebody is lying here, and maybe somebody is lying, but a jury—in this case the Senators—can look at this and say, well, someone is not recalling the same way, someone is more believable because their recollection is better, it is corroborated, or you could conclude that someone is lying. It doesn't always break down that simply, but you have to evaluate that. And that is how you resolve it.

But let me just come back—I think what we see here today is the White House counsel do not want to talk about the facts. They do not want to talk about this case. They do not want to talk about obstruction of justice; just like in the House, they want to talk about the process. They want to talk about everything that is going on except for the case of obstruction of justice. And it probably will be the news story later on today, the questions that they have raised about this.

But the fact is, it is very simple that they have access to Betty Currie. Every time the President has talked to and tried to coach Betty Currie, I don't think the President invited the independent counsel in when this was under investigation, or the Paula Jones lawyers. I don't think that happened. I don't think that—at least from the news clips, when I saw Betty Currie hugging the President, I don't think he invited the House managers in. I didn't necessarily expect him to. But we have to be prepared.

And I will just tell you right now, so nobody is surprised, if we get to call Vernon Jordan, I don't want to delay the U.S. Senate in order to be prepared for that, so I confess today that I called up William Hundley, the lawyer for Vernon Jordan, to visit with him.

Now, I hope that if you talk to any witnesses, that if you feel it is fair, that you will give us a chance to join with you in that. But, obviously, this is an adversary process we are engaged in, and I think that we today in this question and answer session that you all so graciously extended to us should focus on the obstruction of justice charges because that is what you have to determine—on the perjury allegation, because that is what we have to determine today.

I thank the Chief Justice and the Senators.

The CHIEF JUSTICE. This question is from Senators KOHL and EDWARDS to the House managers:

Throughout this trial both sides have spoken in "absolutes"; that is, if the President engaged in this conduct, prosecutors claim he must be convicted and removed from office, while the President's lawyers argue that such conduct does not in any way rise to an impeachable offense. It strikes many of us as a closer call. So let me ask you this: Even if the President engaged in the alleged conduct, can reasonable people disagree with the conclusion that, as a matter of law, he must be convicted and removed from office—yes or no?

Mr. Manager GRAHAM. Absolutely. And this is a hard case in a couple of areas, and I think it is an easy case in many areas.

The Constitution reads that upon conviction, the person shall be removed. You have to put it in the context of the judge cases, because that is where it gets to be hard for this body. Because of the precedents of the body when you apply the same legal standard of high crimes and misdemeanors to the fact that a judge who was convicted of perjury was removed by the body, and you conclude in your mind that the President committed perjury, you have a dynamic you have to work through.

Mr. Bumpers says there is perjury, then there is perjury. I would suggest to you that the allegations of perjury and obstruction of justice in this case are not trivial. It is not about a speeding ticket or a trivial matter. It is about the activity of the President when he was defendant in a lawsuit, a sexual harassment lawsuit, when he was told by the Supreme Court you have to play and you have to play fairly.

If you determine that he committed the crime of perjury and you determine that he committed the crime of obstruction of justice, based on the precedents of the Senate I think you would have a hard time saying under the situation of this case that that is not a high crime. But I would be the first to admit that the Constitution is silent on this question about whether or not every high crime has to result in removal.

If I was sitting where you are, I would probably get down on my knees before I made that decision. Because the impact on society is going to be real either way. If you find this President guilty in your mind, from the facts, that he is a perjurer and that he obstructed justice, you have to somehow reconcile continued service in light of that event.

I think it is important for this body to not have a disposition plan that doesn't take in consideration the good of this Nation. I have argued to you that when you found that a judge was a perjurer, you couldn't in good conscience send him back in the courtroom because everybody that came in that courtroom thereafter would have a real serious doubt.

I will argue to you that when you find this President guilty of perjury, if you do, that he has violated his oath and that by a consequence of that, some public trust has been lost. And I would show to you the body of evidence from this question, "Do you trust William Jefferson Clinton?"—the American people will tell you—three out of four say no. But the American people will also tell you that I understand what happened here and some want him removed and some don't. And you have to consider what is best for this Nation.

I will yield to Mr. Buyer in a second, but the point that I am trying to make, not as articulately as I can, is that I know how hard that decision is. It has also been hard for me.

It has never been hard to find out whether Bill Clinton committed perjury or whether he obstructed justice. That "ain't" a hard one for me. But when you take the good of this Nation, the upside and the downside, reasonable people can disagree on what we should do.

Mr. Manager BUYER. I would just like to remind all of you that the impeachment process is intended to cleanse the executive or the judicial office when it is plagued with such a cancer as perjury or obstruction of justice, which violates the oath required to hold those high offices.

Now, what may be turning in the gut of some of you are the precedents of the Senate, when in fact you have turned out of office, you have exercised your judgments of proportionality when these judges violated their oaths and had committed perjury, you said they shall be removed from office.

Now there are some that are going, well, I am uneasy in this case with the President. That is what may create a little problem here. I would suggest to you that you actually have findings of fact; that the Senate has findings of fact that the President, in fact—he lied or he did not lie or he committed an obstruction; that you actually have findings of fact. And then you can move beyond to the questions of application of the law.

But when the Senate has performed such a cleansing and removed Judges Nixon, Claiborne and Hastings, all three of them impeached for perjury in some form—and in Judge Hastings' case even though he had been acquitted of the criminal case—the Congress, in particular the Senate, you have a duty to preserve the integrity of public office, and that is what impeachment was precisely designed to do.

The CHIEF JUSTICE. This is a question from Senators VOINOVICH, JEFFORDS and CHAFEE to the House managers:

> In her interviews with the Office of the Independent Counsel, Ms. Lewinsky stated that on January 5, 1998, the President told her not to worry about the affidavit because he had seen 15 others. Did the President mean that he had seen previous drafts of Ms. Lewinsky's affidavit, or did the President mean that he had seen drafts of other affidavits that were in some way connected to the Paula Jones matter?

Mr. Manager MCCOLLUM. Thank you, Mr. Chief Justice. You can take that either way. But I believe in the context—and I presented this to you the other day—in which the President uttered those words, that the most logical conclusion is that he had seen 15 other drafts of hers. If you remember, she was discussing with him the issue of whether he wanted to see this particular draft of her affidavit. And at that particular moment he said, "No, I don't want to. I have seen 15 others."

Technically speaking, he could have seen 15 other affidavits in his life somewhere back in Arkansas, who knows? But it strikes me that the logical conclusion, the commonsense conclusion in the context of everything else that you see this President was intent on and had in his mind, and the interest that he had already shown from all the conversations that he had had with Vernon Jordan

and others to make sure that this affidavit was on track, and knowing that he was going to testify in a few days himself in the Jones case, and rely on it and in fact did go in and tell the same cover stories that were in this affidavit to the court, untruthfully, that the probabilities are pretty good, that common sense says that he was saying he had seen 15 other drafts of this version of this affidavit. But that is for you to decide. That is a judgment call for the triers of fact. Thank you.

The CHIEF JUSTICE. This is a question from Senator LEAHY to counsel for the President:

Could you reply to the statement just made by Manager MCCOLLUM?

Mr. Counsel KENDALL. Mr. Chief Justice, on Thursday afternoon I went over, in perhaps tedious detail, the facts relating to the affidavits. I pointed out that there was no way in which—there was no evidence that the President saw any affidavit draft. Mr. Manager MCCOLLUM just now, I think, admitted that he has only a speculation. He doesn't have any record evidence. The President denied seeing any affidavit draft. I pointed out in the managers' chart 7 that their theory about when Ms. Lewinsky could have gotten an affidavit was simply wrong because their theory was she got it on January 5. This is a single affidavit draft. The evidence plainly shows that she could not have gotten it until January 6. There is simply nothing in the record—and the independent counsel interviewed Ms. Lewinsky extensively, both in interviews and before the grand jury—and there is simply no evidence whatsoever that the President saw any drafts or, indeed, that there were 15 drafts.

Let me say a word about whether or not we are addressing the facts. I am not going to frighten you. I am not going to go back through the obstruction of justice evidence. But I think if you will remember the presentation—first by Mr. Craig who addressed in detail the evidence with regard to perjury, then if you will recall what Ms. Mills said addressing two of the seven allegations of obstruction of justice, and with what I said to you on Thursday afternoon for almost 3 hours—and I thank you for your uncommon patience; you were attentive all the way through that exercise—you know that we have addressed the facts. What we had yesterday, what Mr. Ruff has already addressed, is a, again, I will use the word "remarkable" occurrence involving the independent counsel.

We have addressed the facts, and there is simply nothing to support in all this record, this heavy, long record, that the President had any review of any affidavit or, indeed, that there were more than one or two drafts of Ms. Lewinsky's affidavit.

The CHIEF JUSTICE. This question is from Senators DEWINE, SANTORUM, and FITZGERALD to the President's counsel:

If we are to assume that the various allegations as to obstruction of justice are in fact true, is it your contention that if the President tampered with witnesses, encouraged the hiding of evidence, and corruptly influenced the filing of a false affidavit by a witness, that these acts do not rise to the level of an impeachable offense?

Mr. Counsel RUFF. Mr. Chief Justice, this is something I won't have an opportunity to say very often, but I believe that Mr. Manager GRAHAM has, in fact, stated for you the essential of the role that this body must play. We will probably differ as to what the

right answer to the question is, but as to the process and as to the question that must be asked, I think he stated it well.

I believe that the facts do not support the conclusions that are embodied in the question. But not only can reasonable people differ on the facts, but reasonable people may differ on the outcome. And if, indeed, reasonable people can differ, doesn't that mean, by the very statement of that proposition, that this body cannot meet its constitutional heavy mandate, which is to determine whether or not, whatever conduct you believe the President committed, as outlined by these managers over the last many days—can you legitimately determine that he ought to be removed from office.

And all I can do, I suppose, is to remind you, as I have too frequently, I am sure, that if you try to put yourself in the minds and the hearts of the men who created our system of Government, they wanted to know only really one answer to one question, as framed in many different ways, but the essence remains the same: Is there a sufficient danger to the state—danger to the state—to warrant what my colleagues across the aisle here have called the political death penalty. And I think the answer to that is no.

The CHIEF JUSTICE. This is a question from Senator WELLSTONE to counsel for the President:

To what extent should the views of the American people be taken into account in considering whether a President should be removed from office?

Mr. Counsel RUFF. Mr. Chief Justice, I think that the answer to that question is not the polls that you read in the newspapers or that you see on your evening news, whatever those numbers may be; that is only one clue as to what the American people are thinking. And each of you knows the people in your jurisdiction far better than any polltaker does and that certainly I do.

But surely one way to test the ultimate question that I just described in response to the last inquiry from the Republican side of the House, is to ask yourself, on the basis of experience over the last year, on the basis of your experience in the political—and by that I mean political in the very best constitutional sense of the term as used by Alexander Hamilton—as to your sense of the political structure of this country and what the people are saying to you and what your sense of their needs is: Do they need the kind of cleansing that Manager BUYER spoke about?

I think the answer to that, if you look within the body of people you are most familiar with, must be no. This isn't to say that it is a popularity contest, that we ought to go out and have a referendum or another poll before you all decide on this. But surely the sense of the people, the will of the people, the belief of the people in this President's ability to govern must educate each of you, not mandate a result, but surely guide the result that you reach in this proceeding.

The CHIEF JUSTICE. This is a question from Senator COLLINS to the House managers:

The President's counsel has made much of Ms. Lewinsky's statement that no one "promised" her a job for her silence. She did not testify, however, that no one promised her a job in return for a false affidavit—or, for that matter, that no one implied that she would get a job for her cooperation. Can you think of any reason why we should not call Ms. Lewinsky to help clarify such ambiguous testimony?

Mr. Manager HUTCHINSON. Thank you, Mr. Chief Justice. That is an excellent question and really goes to the heart of some of the disputes.

I think as you read the testimony of Ms. Lewinsky, as you read some of the other areas of testimony, questions come to your mind. You would like to follow up, you would like to ask her a question, and that one comes out and flags you that that is a question that would like to be asked: No one promised her a job for her silence, and that is the testimony that she gave in response to a question in the grand jury.

But I believe this is a case in which actions speak louder than words. I think that actions and what took place and the commonsense understanding of what is happening here demonstrate the case that there was a false affidavit that was obtained and that was in conjunction with the obtaining of a job for Monica Lewinsky.

So I think that is a natural question, and I think that also if you read, if you look at the testimony of Monica Lewinsky, I think it is clear that the case is made that she was encouraged to lie and she was also encouraged to sign a false affidavit and she was also provided a job coincidentally at the same time.

I would like to take the opportunity, if I might, Mr. Chief Justice, in further answering a question that was raised earlier; it was on the false affidavit. That is, I think, related to the question as well.

During Mr. Kendall's presentation a few days ago, he made this statement:

> The idea that the telephone call [between Lewinsky and Clinton on January 5] is about that affidavit is sheer, unsupported speculation and, even worse, it is speculation demolished by fact.

This is the statement that Mr. Kendall gave the other day on this floor, as cited in the CONGRESSIONAL RECORD, summarizing his presentation that the idea that Clinton and Lewinsky talked about the affidavit "is sheer, unsupported speculation and . . . demolished by fact."

Well, the record demonstrates that Monica Lewinsky's testimony is that she had a conversation with the President on the telephone in which she asked questions about the affidavit. She was concerned about signing that affidavit. And according to Ms. Lewinsky, the President said, "Well, you could always say the people in Legislative Affairs got it for you or helped you get it." And that is in reference to a paragraph in the particular affidavit.

Now, my question to Mr. Kendall is, Would you agree, Mr. Kendall, that your assertion that there is no support for it in the Record is that you are totally rejecting the testimony of Monica Lewinsky as totally unbelievable? And once again you have a conflict that is presented in the testimony, and there is only one way to resolve it, and that is to hear from the key witnesses.

The CHIEF JUSTICE. This is a question from Senator LAUTENBERG to counsel for the President:

> Could you reply to the question put by the manager?

Mr. Counsel KENDALL. Mr. Chief Justice, let me address the first part of Mr. Manager HUTCHINSON's response; and that is, whether the statement by Ms. Lewinsky that "Nobody ever promised me a job for my silence" covered other possible promises to

her. And it is quite clear, when you read all the interviews that were done of her by the independent counsel, all the grand jury testimony, that she unequivocally testified there were no promises made to her, there were no assistances given to her, that were in any way conditioned upon her testifying a certain way or giving a certain kind of affidavit. And she is unequivocal about that.

Now, in the statement that she made that I quoted, she does not say nobody ever did these other things, but she said that in her previous testimony. She uses the offer of a job as simply a proxy for anything that would connect the assistance she would receive with testifying in a certain way. There is simply no evidence anywhere in the record. And the independent counsel covered that with her in detail. She felt compelled to volunteer her statement at the end of the process because they had left some innuendo in the record that she had been provided assistance. But her testimony is unequivocal. I have quoted it.

Now, the only testimony in the record about linking the job to some assistance in the Jones case comes from the Linda Tripp audiotapes. And, again, Ms. Lewinsky could not be clearer in her grand jury testimony what she told Linda Tripp was false. There was no connection there whatsoever. Her proffer, which I put up on the board, was quite unconditional. And this you have in your materials. This is in her own handwriting: Neither the President nor Mr. Jordan nor anyone on their behalf asked or encouraged her to lie.

So with regard to the first part of Mr. Manager HUTCHINSON's question, there is simply no evidence, again, that any kind of assistance to Ms. Lewinsky was conditioned on her performance in any way in the Jones case.

Now, with regard to the affidavit, I stand on what I said before you on Thursday. And I want to be very clear about what Mr. HUTCHINSON's presentation was in chart No. 7 that I was responding to. And I think it is quite important to recall yesterday that a question was addressed to the House managers whether there were any statements contained in their exhibits which contained misrepresentations or omissions that, in the interest of fairness to justice, they would like to correct; and Mr. Manager HUTCHINSON said, "We are not aware of any corrections that need to be made on any of our exhibits offered to the Senate."

I would simply rest on the presentation. I am not going to take you through, again, the many errors in the charts. Those were not refuted in any way. They rested on their charts. I leave that to your judgment.

But with regard to chart 7, what Mr. Manager HUTCHINSON told you almost a week ago was that chart 7 was a summary of what happened on January 5: Ms. Lewinsky meets with her attorney, Mr. Carter, for an hour; Carter drafts the affidavit for Ms. Lewinsky; she calls the President; the President returns Ms. Lewinsky's call; and then they had a discussion about this draft affidavit.

The point of my demonstration through Mr. Carter's testimony and through his billing records was in fact that the affidavit had been drafted the next day. They could not have had a discussion

about the affidavit on that date. And I think the record is quite clear on that.

The CHIEF JUSTICE. This is a question from Senator LOTT to the House managers:

Do you have any comment on the answer given by the President's counsel with regard to the views of the American people?

Mr. Manager HYDE. Mr. Chief Justice, distinguished Senators, this is a fascinating question. Edmund Burke was asked that once, and he said that a member of Parliament owes the highest degree of fidelity to his constituents, but he doesn't owe his conscience to anybody.

We have, or we have not, a representative democracy. We are not delegates who are sent here to weigh our mail every day and then to vote accordingly. Our work here is not an ongoing plebiscite. We are elected to bring our judgment, our experience, and our consciences with us here.

I have always believed—and I believe more firmly than ever; and this experience confirms me in that belief—there are issues of transcendent importance that you have to be willing to lose your office over. I can think of several that I am willing to lose my office over—abortion is one; national defense is another; strengthening, not emasculating, the concept of equal justice under the law. My life is devoted, as a lawyer—I have been on the Judiciary Committee; this is my 25th year—and equal justice under the law is what moves me and animates me and consumes me. And I am willing to lose my seat any day in the week rather than sell out on those issues.

Despite all the polls and all the hostile editorials, America is hungry for people who believe in something. You may disagree with us, but we believe in something.

RECESS

Mr. LOTT. Mr. Chief Justice, I ask unanimous consent that we recess the proceedings for 15 minutes.

There being no objection, at 11:19 a.m., the Senate recessed until 11:36 a.m.; whereupon, the Senate reassembled when called to order by the Chief Justice.

The CHIEF JUSTICE. The majority leader is recognized.

Mr. LOTT. Thank you, Mr. Chief Justice. We will go approximately another hour, if questions are still available—and I assume they will be—and then we will break for about an hour for lunch.

The CHIEF JUSTICE. This is a question from Senator BIDEN to the House managers:

If a Senator believes that the President may have lied to the American people, his family and his aides, and that some of his answers before the grand jury were misleading or half-truths, but that he could not be convicted in a court of law for either perjury or obstruction of justice, is it the opinion of the House managers that his actions still justify removing the President from office?

Mr. Manager BARR. Thank you, Mr. Chief Justice. I have taken two public oaths in my career in the service of the people of this great land. One was as a Member of Congress; the other was as a U.S. attorney. As a U.S. attorney, it was my job on behalf of the people of the United States to prosecute cases against individuals and other entities that violated the Criminal Code of the United

States of America. That Criminal Code, as you are well aware, includes the offenses of perjury and obstruction of justice.

That Criminal Code does not include the offenses of lying to one's family. That is not what brings us here today. What brings us here today is the belief by the House of Representatives in lawful public vote that this President violated, in numerous respects, his oath of office and the Criminal Code of the United States of America—in particular, that he committed perjury and obstruction of justice.

I can tell you, as a U.S. attorney serving under two Presidents, that I would prosecute these cases, because I did prosecute such cases. I prosecuted cases against people, including members of the body from which we as managers come, who appeared before grand juries and lied, who appeared before grand juries and misled grand juries, people who obstructed justice, people who tampered with witnesses in precisely the same way that this President has committed perjury, tampered with witnesses and obstructed justice.

We respectfully submit to the Senators of the United States of America assembled here today that these are prosecutable cases, that they are cases that have been prosecuted, and that the question before this body, we respectfully submit, in the House of Representatives' articles of impeachment, is not that the President lied to his family. What is before this body, we respectfully submit, as contained in the two articles of impeachment passed by the House of Representatives, is that this President violated his oath of office and committed the offenses of perjury and obstruction of justice, which we firmly believe on behalf of the people of the United States of America provide a sufficient basis on which this body, exercising its deliberative power and its legitimate jurisdiction, may find that this President, as people in courts of law similarly but not identically situated are indeed found guilty and removed from positions of trust, as this President ought to be for committing the perjury and obstruction of justice—not lying to his family.

Thank you.

The CHIEF JUSTICE. This is a question from Senators SNOWE, MACK, CHAFEE, BURNS, and CRAIG to the House managers:

> Before Ms. Lewinsky was subpoenaed in the Jones case, the President refused on five separate occasions—November 3, November 10, November 12, November 17, and December 6—to produce information about gifts from Lewinsky. The President's counsel argued the President was unconcerned about these gifts. If that is the case, why didn't he produce these gifts in November and December?

Mr. Manager ROGAN. Mr. Chief Justice, I thank the Senators for the question. This case needs to be looked at for the mosaic that it is.

There is a reason why the President never produced gifts. There is a reason why the President continued to give Ms. Lewinsky gifts. It is because he believed that she would never produce them. We know that from her testimony.

In my presentation to the Senate a week ago, I quoted from the transcript where she said, "Nobody ever asked me to lie." But then she also said there was never any doubt but that "we" would deny the relationship if asked.

We see that throughout the entire proceeding. We see that before Monica Lewinsky's name appeared on the list—on December 5—on the witness list. And we especially see it after. In fact, Monica

Lewinsky went to the President and said, "I've been subpoenaed. They are asking for gifts. What should I do? Maybe I should give them to Betty." And the President said, "Let me think about that." And we all know by now that within a few hours Betty Currie called Monica Lewinsky and came and retrieved the gifts, not to give them to the Jones lawyers pursuant to the subpoena, not to cooperate with the sexual harassment lawsuit; she took the gifts and she put them under her bed.

Members of this body, it begs common sense for any interpretation of that conduct to be somehow cooperative with the legal proceedings in the sexual harassment case. Every piece of this puzzle, when put together, demonstrates a very clear pattern of obstructing justice, not to cover up personal affairs, not to cover up an indiscretion, but to destroy Paula Jones' rights under the sexual harassment laws of this country to have her day in court. That is the ultimate question that this body is going to have to address.

Yes, reasonable minds can differ on this case as to whether the President should be removed office. But reasonable minds can only differ if those reasonable minds come to the conclusion that enforcement of the sexual harassment laws in this country are less important than the preservation of this man in the office of the Presidency. And that is the ultimate question that this body is going to have to answer. What is more important—the survival of Bill Clinton's Presidency in the face of perjury and obstruction of justice, or the protection of the sexual harassment laws in this country?

And imagine, every victim in the workplace will be waiting for your answer.

The CHIEF JUSTICE. This is from Senator DASCHLE to the House managers:

> Will you agree to arrange to have prepared a verbatim, unedited transcript of any debriefing which may occur with Ms. Lewinsky for immediate distribution to the Senate? And will you agree also to provide for the inclusion of any such debriefing of representatives of the Senate, one selected by the majority and one by the minority?

Mr. Manager MCCOLLUM. Mr. Chief Justice and Members of the Senate, it is not our intent to be doing a deposition, a formal presentation, a preparation for the Senate, if we talk to Ms. Lewinsky. It is our intent to do what any good attorney would do in preparing to go to trial, presuming—we don't know that you are going to allow us to have witnesses—but presuming we are going to be able to depose and have witnesses, and that is to meet with the witness, talk with the witness, and prepare the witness. And any good attorney who does that is going to meet his or her witness in their own confidences, in their own quiet respite. We discover things that way. We are not prepared. No. The answer to your question is no, we are not prepared to say we are going to give you our work product, which is what that would be.

"Work product" is a technical term of law which, for anybody who is out in the public, is what lawyers do all the time. And they work on their case, and they prepare what they are going to do, and then they present it. That is the system we have.

Somebody said—I think it was Mr. HUTCHINSON who said earlier—this is an adversarial position. The White House counsel will

have their chance to talk to witnesses that they are going to present; we will have our chance to talk to ours. Then there is the opportunity for the depositions, which is what comes next, which is the formal proceedings when we both have a chance to talk with them. Then, of course, if you let us call them as witnesses here, they will be here, and they will get cross-examined, and examined, and all the questions you can imagine will be asked. That is the traditional American system of justice.

So, no, we would not give you our work product notes. We have no idea what would be in them. We don't think that is appropriate. We think that a lot is being made out of this. We attempted to do this a couple of weeks ago. We would have liked to have talked to her earlier. It has not worked, that we have been permitted to, for reasons that we are not sure. But the reality is, this is the normal process. We would talk to any other witness despite however the White House counsel wants to argue about it. They do the same thing.

I yield what time I have left to Mr. GRAHAM.

Mr. Manager GRAHAM. I would like to echo the work product analogy.

But let me just say this as directly as I know how to say it—that if this body as a whole believes we are going to do anything improper, then whatever rule you need to fashion to make sure we don't, you do it, because nobody should ever doubt whether a witness comes into this body in this case with anything other than testimony that was truthful. If you want to go down the road of the atmosphere that people were approached and how they were treated about being witnesses, let's go down that road together. Let's bring in people in this body and let's see how they were approached when they were asked to participate in this trial, what the atmosphere and the mood was, when it comes to their time to be identified as witnesses.

So I would just say as strongly as I know how that if you have any doubt about us and what we are up to, you fashion rules so we do not create an unfairness in this body; but please, when we ask for witnesses and we raise doubt about how people may have been treated, that you give us the same opportunity to explore the moods and atmosphere of those witnesses.

The CHIEF JUSTICE. This question is to the House managers from Senators MURKOWSKI, GREGG, GRAMS, THOMAS, CRAPO, THOMPSON and HATCH:

> The President's counsel rely upon the President's statements in many instances. Therefore, the President's credibility is at issue. Is the President's credibility affected by the fact that, until the DNA evidence surfaced, the President denied any improper relationship with Ms. Lewinsky?

Mr. Manager ROGAN. Mr. Chief Justice, I thank the Senators.

First, I don't think it was a compliment to me from my colleagues that as soon as the issue of DNA came up, they all pointed to me and told me to come up and answer the question. I will do my best.

Obviously, as the triers of fact, Members of this body individually will have to make determinations respecting credibility of the President as well as the other witnesses. It is indisputable, however, that from January 1998, when he spoke at the deposition,

until August 17, when he made a quasi-admission before the grand jury, there were intervening factors that required him to change his position.

We saw from the moment the story first broke in the press about Monica Lewinsky the President making denials in the most emphatic of ways, and not only doing it repeatedly himself but sending out his Cabinet and his aides and his friends to do it on his behalf. That continued up until the eve of the deposition. Was it because the President suddenly had a change of heart? Was it because his conscience was suddenly bearing down upon him? Or were there other reasons? Well, let's see.

Just before his deposition testimony, Monica Lewinsky decided to cooperate with the Office of Independent Counsel. Monica Lewinsky suddenly turned over a blue dress. And that is fascinating because, as you know from the record and you have heard from the presentations, the President was prepared to take Monica Lewinsky and trash her in a very public way until the dress was turned over to the FBI. Remember what he said to Sidney Blumenthal. He called her a stalker. He said that she was threatening him. But he no longer could make these presentations publicly or privately once he knew there was potential physical evidence.

So I think there are a number of factors Members of this body can look at with respect to credibility just from the cold record. But if that is not enough, if Members of this body are not satisfied that they are able to resolve these issues of credibility, then the way to handle this is to follow the dictates of the Constitution and our Framers who understood the value of trial and bringing witnesses forward, placing them under oath and giving the triers of fact the opportunity to see the witnesses, to hear their testimony, to gauge their credibility.

That is what the purpose of a trial is for. And the House managers entrust this body to make sure that at the end of the day this is more than a proceeding; this is an arena where the truth will be determined not just for our time but for history.

The CHIEF JUSTICE. This question is from Senator MURRAY to counsel for the President:

Could you reply to the comments of Manager ROGAN?

Mr. Counsel RUFF. The existence of DNA or any other evidence or any other events before the President's grand jury testimony had no bearing whatsoever on his determination which he carried out on that day in the middle of August to answer the grand jurors' questions truthfully. He did so. It may be that the managers can speculate about, well, there must have been some reason why in the middle of August, after some months of denying to the Nation and his family any misconduct, he changed his mind and told the truth. But there was one reason why he did that. Because he went before the grand jury for the United States District Court of the District of Columbia and told the truth.

Now, it has been suggested by many of the managers over the last day that the President was somehow anxious to—or contemplated the prospect of, as they put it, trashing Ms. Lewinsky.

This issue was raised yesterday and has been raised again by Mr. Manager ROGAN. I think it is time to set that record straight.

Mr. Manager BRYANT yesterday, as he was discussing the Dick Morris issue, purported to recite from the independent counsel's referral and purported to describe a conversation between the President and Mr. Morris in which, to quote from Mr. Manager BRYANT, "According to Morris, the President warned him"—that is, Mr. Morris, he warned the President—excuse me. Let me start before that.

Later the next day, the President has a followup conversation with Mr. Morris, in the evening, and says that he—

That is, the President—

is considering holding a press conference to blast Monica Lewinsky out of the water. But Mr. Morris urges caution. He says, "Be careful."

And that he warned the President not to be too hard on her.

Well, 180 degrees off from that description, let me read you what, in fact, the independent counsel's office referral says, and I am sure it was just a slip of the read that you heard yesterday.

The President had a followup conversation with Mr. Morris during the evening of January 22nd, 1998—

This is page 127 of the independent counsel's referral—

when Mr. Morris was considering holding a press conference to "blast Monica Lewinsky 'out of the water.'" The President told Mr. Morris to "be careful." According to Mr. Morris, the President warned him not to "be too hard on [Ms. Lewinsky]". . .

Close. Close. One hundred eighty degrees off. Beyond that, let me be very clear about one proposition which has been a subtheme running through some of the comments of the managers over the last many days. The White House, the President, the President's agents, the President's spokespersons, no one has ever trashed, threatened, maligned or done anything else to Monica Lewinsky—no one.

The CHIEF JUSTICE. This is a question from Senators HUTCHISON of Texas, SNOWE, ALLARD, COLLINS and HATCH to the House managers:

The counsel for the President have said that the heart of this case is private consensual sex. A tenet of sexual harassment law, however, is that the implied power relationship between a supervisor (in this case, the President), and a subordinate (in this case an intern), is enough to constitute sexual harassment.

This is well settled in military law and is developing along this line in the civilian sector. In your view, how might acquittal of this case affect laws regarding sexual harassment?

Mr. Manager ROGAN. Mr. Chief Justice, the law of sexual harassment is a relatively new genre. If somebody wanted to make a case before the Congress had stepped in and improved upon the law, it essentially reduced women in the workplace, for instance, who had been harassed into what has been referred to as a "he said-she said" type of argument, and so the law has improved upon that type of argument because the law recognizes today that sometimes there can be evidence of a pattern of conduct, and that conduct is relevant to prove how somebody may have behaved.

Consider what would happen if victims of the workplace get a message from the Congress of the United States that what the President did with Paula Jones, or allegedly did with Paula Jones,

is of no constitutional significance here. It would send a message to every woman in the workplace that if they have a complaint against an employer who is attempting to use a position of power and authority to pursue improper advancement, the message would be that you might as well just keep quiet about it because the person can lie in court and suffer no recrimination. First, they will probably never be discovered, because most of the time DNA evidence doesn't suddenly appear, but even if DNA evidence does appear to corroborate the victim, the message is that as long as he is appropriately apologetic and the lie was, after all, only about sex, it is of no import with respect to removing them from their job or having them suffer any legal consequences. I think that would be a horrible message.

The reason the law allows this pattern-of-conduct evidence is because sexual harassers operate in a unique way. They get their victims alone. They typically don't commit these crimes under the glare of klieg lights or in front of television cameras or where witnesses can testify. They get their victims alone for one reason—because they know through intimidation and fear one of two things will happen. Through intimidation or fear, the victim will submit; or through intimidation or fear, the victim will not submit but will keep their mouth shut about it.

What is the message to these victims who do brave losing their job, being destroyed publicly, having their reputations destroyed? What is the message to them if, when they come forward and they want to pursue their case, we take the legal view that somebody can perjure himself, somebody can lie, somebody can obstruct justice, somebody in the greatest position of power in our country can take whatever steps are necessary to destroy that woman's claim in a court of law where she is entitled to pursue it if at the end of all of this we say: Well, you know, he was embarrassed, he did lie but it was only about sex? Lies in sexual harassment cases, Members of the Senate, are always only about sex.

The question before this body is, what type of validity are we going to give these laws and what sort of message are we going to send to victims in the workplace? I pray that we can put personal relationships aside with respect to how people individually feel about this President personally and how they feel about his administration and focus on what is the ultimate conclusion legally and what is the precedent that would be set if we turned a blind eye to this sort of conduct.

The CHIEF JUSTICE. This is a question from Senators BOXER, FEINSTEIN, LANDRIEU, MIKULSKI and MURRAY to counsel for the President.

Has Ms. Lewinsky ever claimed the relationship was other than consensual and was not Ms. Jones' case dismissed as having no claim recognized by law?

Mr. Counsel RUFF. No. And yes. Indeed, as Mr. Manager ROGAN has told you, and others before him on the managers' side, our sexual harassment laws and our civil rights laws are of critical importance to all of us. My colleague, Ms. Mills, spoke eloquently on that subject a couple of days ago.

But it is important to understand, I believe, with no sense at all that we are in any way diminishing the importance of those laws and of the rights of every American citizen to seek justice under

those laws, that we are talking about a case in which the trial judge determined that on all the evidence that had been gathered and all the claims that plaintiff had made and all the discovery that had been taken, there was no case. That is justice. That is the way the system works. The plaintiff brings the claim, the process moves ahead, and a judge ultimately makes the decision. And this didn't have anything to do with what President Clinton said in his deposition on January 17. What the judge ruled was, first, that that evidence was irrelevant to her consideration; and then ultimately, in April of last year, that there simply was no case.

We accept the results of the justice system whether they go against us or whether they go for us. In either event, it is justice.

The CHIEF JUSTICE. This is a question from Senator THOMPSON to the House managers:

> Is there any reason to believe that there is any relationship between the President telling Mr. Blumenthal that Ms. Lewinsky was a stalker and expressing his frustration about not being able to get his story out with the fact that shortly thereafter negative stories about Ms. Lewinsky, including the allegation that she was a stalker, began to appear in news articles quoting sources at the White House?

Mr. Manager HUTCHINSON. Well, I appreciate that question. And thank you, Mr. Chief Justice. Because I made a note of Mr. Ruff's statement that no one—and I believe he specified the President, his aides, or no one has ever trashed or spoken ill—used some other words—of Monica Lewinsky. It really caught me as striking, in light of the sworn grand jury testimony of Sidney Blumenthal. And, of course, he is testifying as to what the President told him. And, of course, in that conversation the President told Sidney Blumenthal, as described by Mr. Blumenthal, that: Monica Lewinsky came at me and made a sexual demand on me. I rebuffed her. The President said: I have gone down that road before, I have caused pain for a lot of people. I am not going to do that again. She, referring to Monica Lewinsky, threatened the President. This is the President's statement. It goes on and describes it; she was known as a stalker.

In my understanding that is trashing, that is speaking ill, that is being very critical and doing everything you can to basically destroy her reputation.

Now, why was he telling Sidney Blumenthal that? Was he trying to use Sidney Blumenthal to get the message out to the public and to the grand jury, who might hear this, that she is not a believable person? That the whole idea is that she came on to him, that threatened the President of the United States? I think—I don't understand Mr. Ruff's representation to the Senators that no one, including the President or aides, has ever trashed Monica Lewinsky.

Now, I think it is important also, at that particular point in time, the President knew that Sidney Blumenthal and John Podesta would be a witness before the grand jury. That was his testimony. That is what the President of the United States admitted to. He said he knew that they were going to be witnesses. And, clearly, that constitutes obstruction of justice; when he knows that they are going to be a witness, he gives them false information knowing they are going to repeat it to the grand jury, and that is an element of one of the pillars of obstruction.

I want to come back to some things that have been said about the Jones case. First of all, it has been characterized as a "no win" case—that Judge Susan Webber Wright issued that order.

Well, if the truth had been known, what we know now about the relationship, about the pattern of conduct, would that have made a difference? And, of course, when those facts came out it was right before a decision by the Eighth Circuit Court of Appeals that might have reversed Judge Wright's order that the President of the United States made a decision he could settle this case for eight hundred and something thousand dollars.

What would have happened? Maybe Paula Jones would not have had to have gone through that many years of litigation if the truth had just come out.

But there was a pattern of obstruction of justice, of lying, of coaching witnesses, of tampering with witnesses, which ultimately led to a defeat of that case and the truth not coming out. But when it came out, it made a difference; it made a difference for that plaintiff in that civil rights case.

Senator HUTCHISON asked a question about whether the power of the position makes the difference in sexual harassment cases. Let me assure you, if there is any chief executive officer of any company, whether it was consensual or not, with an intern or a young person half of the officer's age and whether it was—whatever they termed it at that point, whether it was a subordinate employee—and that is the key language, "subordinate employee," then, yes, Senator, it does make a difference, and that is the crux of many cases that are brought into court to protect women against sexual harassment in the workplace. I think it is a linchpin of this act that this Congress passed. So I think that when you look at the overall picture, there is that pattern of obstruction of justice.

Senator BIDEN asked a question, Would any prosecutor bring this case forward? Let me tell you, it would be easier—and I say this with great deference to the Senate—but it would be easier to win a conviction beyond any reasonable doubt, and I could win a conviction beyond a reasonable doubt in a court in this country on obstruction of justice because I know that common sense permeates a jury panel whenever they hear this case and the perjury—they are not going to buy, they are not going to accept what "is" is. They understand what these words mean, and common sense will apply. And I know that common sense exists in the Senate of the United States.

But let me assure you that this is a case that I would bring forth without any hesitation, and I believe the proof would demonstrate a conviction beyond a reasonable doubt.

The CHIEF JUSTICE. This question is from Senator KENNEDY to the counsel for the President:

Could you reply to Mr. HUTCHINSON's allegations?

Mr. Counsel RUFF. I think it important, because the question put to the House managers, Mr. Chief Justice, was whether there was some effort or some relationship between Ms. Lewinsky and a series of articles or stories that supposedly appeared in the early days following the revelation of this investigation—I think it is important to recognize what the real facts are here.

This was the point made at the very end of my testimony before the House Judiciary Committee on December 9. One of the members of that committee spoke at great length and quite heatedly about what he believed to have been a plan to disseminate unfavorable information in the press, and he submitted for the record a number of newspaper articles.

The articles that he submitted, which were largely spun off of one Associated Press story, did not contain two—at least two—statements that made it very clear that the accusation that there was some effort on the part of the White House to disseminate disparaging information were simply false.

In an Associated Press story of January 31, which was used by a member of the House Judiciary Committee as one of his examples of how the White House was supposedly coordinating such an attack, there was omitted the following portion. This is a statement by Ann Lewis, who is the White House communications director:

> To anyone who was saying such things about Ms. Lewinsky, either it reflected a lack of coordination or thought or adult judgment. We are not going down that road. It is not the issue. A discussion of other people is not appropriate.

That is on January 31. Retrospectively, when Ms. Lewinsky had already begun to cooperate with the independent counsel, the Los Angeles Times wrote the following:

> From the beginning, the White House has been careful about what it has said of Ms. Lewinsky. The week the Lewinsky story broke in January, Clinton's press secretary, Mike McCurry, signaled the tone the White House would take by deflecting questions about whether the 24-year-old intern was less than stable.

Mr. McCurry:

> "I can't imagine anyone in a responsible position at the White House would be making such an assertion. I've heard some expressions of sympathy for what clearly someone who is a young person would be going through at a moment like this." And McCurry quickly signaled that the marching orders had not changed once Lewinsky made a deal with the independent counsel, Kenneth Starr, for immunity from prosecution.

I think it is important that the record be clear that the stories about which the managers were asked in their last question simply never reflected any plan, coordinated or uncoordinated, to do anything other than treat Ms. Lewinsky with respect.

The CHIEF JUSTICE. This question doesn't show which Senators are submitting it.

Mr. LOTT. Senator HATCH.

The CHIEF JUSTICE. This is a question from Senator HATCH:

> Isn't it true that Chief Federal District Judge Johnson ruled today—in an order that she authorized to be released to the public—that Ms. Lewinsky's immunity agreement, which requires her "to make herself available for any interviews upon reasonable requests," compels her to submit to an interview with the House? What light does this shed on the earlier debate on this matter?

I am sorry, it is addressed to the House managers.

Mr. Manager BRYANT. Mr. Chief Justice, I think certainly having come from an experience of practicing law and learned so much over the years and trying cases and putting together cases in an ethical and appropriate fashion, to come into a political proceeding, and as we have dealt with this, and I think as the lawyers to my left had to deal with the same type of situation, in a political

realm, not just in the Senate, but months and weeks before we came in to here, is very difficult.

What we have seen this morning is a completely innocent standard practice of sitting down with a potential witness before you have to list your witnesses Monday and deciding whether or not you want to use her.

They have talked about lawyers committing malpractice by not taking depositions. I submit it would be close to that if you don't talk to a witness before you call that witness. Certainly, while the OIC has had communication with her over some time, we have not. We have not had contact with any of these witnesses.

I alluded earlier to the White House and the other witnesses that work for the White House that we might be looking at calling. I must presume by this conversation in this area of questioning that they have not had any contact about this case with Ms. Currie and Mr. Podesta and Mr. Blumenthal, and even a friend of the White House, Mr. Vernon Jordan. We are not asking we be privy to every time they say hello in the hallway to these people or may sit down and talk with them. We understand the realities of life. We simply just wanted that crazy idea that maybe we ought to talk to a witness before we decide whether or not we want to list that witness.

I think to answer that question—and I will sit down—Judge Johnson clearly vindicated this right to do that, to accomplish that through the immunity agreement. I apologize if we have offended the Senators. We certainly didn't intend to do that. We certainly didn't intend to break any rules about this, and we don't think we did.

Certainly, if we are going to go down that road, and if you see it is appropriate that we have a rule you can agree on, we would be happy to abide by that, but we would simply like equal treatment with the other witnesses, also with the White House and their attorneys. Thank you.

The CHIEF JUSTICE. This question is to the House managers from Senators COLLINS and FEINGOLD:

On the basis of the President's and Betty Currie's testimony concerning their conversation on Sunday, January 18, 1998, have each of the elements of obstruction of justice under 18 U.S.C., section 1503, or witness tampering under 18 U.S.C., section 1512, been met? We are particularly interested in your analysis of whether the Senate can infer that President Clinton intended to corruptly influence or persuade Ms. Currie to testify falsely and the weight to be given Ms. Currie's testimony in that regard.

Mr. Manager HUTCHINSON. The answer is that, under 18 U.S.C. section 1503, there is a case for witness tampering in the conversation between President Clinton and Betty Currie.

I want to refer you to a case, United States v. Shannon, which is an Eighth Circuit Court of Appeals case decided October 12, 1987. And for you lawyers here, it has been Shepardized. It is good law, and it really puts this into perspective.

In the case, the defendant contended that the evidence did not support a conviction under 18 U.S.C. section 1503 because the Government did not prove that the witness in this case, Gray, was ever a witness before the grand jury or that the defendant knew that that person was going to be a witness before the grand jury. And this is what the court said:

This argument is . . . without merit. A conviction under section 1503 for attempting to influence a witness is appropriate so long as there is a possibility that the target of the defendant's activities will be called upon to testify in an official proceeding.

Now, this gentleman, this defendant, Mr. Shannon, went to jail. He made the defense that, "Well, I didn't—you know, that person was never called as a witness, it was never an official proceeding," and it didn't fly. He was convicted. It was affirmed by the court and, presumably, he went to jail. Now, that is the law of the land in the criminal courts of our country. And so there would be a conviction under 18 U.S.C. section 1503.

In this case you have much more because, as I pointed out yesterday in reference to Betty Currie, Betty Currie was clearly a witness. They left that deposition knowing she would be a witness. The Jones attorneys went back and immediately worked on issuing a subpoena for her because they had to have her because the President asserted her name continually through that. The President knew she was going to be a witness. He came back and engaged in one conversation where he coached her testimony. He tampered with her testimony. It wasn't enough, so 2 days later he brought her back in again and did the exact same thing. The legal question is, As a prospective witness, is she covered under the obstruction of justice statute? The answer is, yes, because other people go to jail for exactly the same thing.

But I think we need to take a step back a moment. This U.S. Senate is not bound by the strictures of the U.S. Criminal Code. If I came in here today and said, "Well, under the criminal procedures of the land, I'm entitled to bring witnesses and I'm entitled to cross-examine, and I'm entitled to do this, and we need to follow the criminal procedure code," you would say, "No. This is the Senate of the United States." And you would rightfully say that. You set your own rules in this.

And the same thing is true with the criminal law of the land. I think that we make a criminal case for obstruction of justice that can be prosecuted, as other people are in every courtroom in this land. But that is not the burden here. The issue is, Is this an impeachable offense? And something that is much higher is at stake, and that is the public trust, the integrity of our Government, much more than in United States v. Shannon. And that is what you are dealing with.

So we can debate the criminal code all day—and we win all that—but we have to talk about the public trust, the integrity of our system. And that is what our country needs you to win for them.

The CHIEF JUSTICE. This question is from Senators THURMOND and BUNNING to the counsel for the President:

If there was no case and the White House accepted the results of the justice system, why then did the President pay nearly $1 million to Paula Jones?

Mr. Counsel RUFF. I say this with all due respect, truly. As I think everyone knows in this Chamber, and outside this Chamber, who has practiced law, litigated difficult cases, the judgment of a defendant to settle a case, to pay whatever sum may be required to settle it, is, in all candor, I think, for all of us, not reflective of any belief that he was wrong, that the other side was right. It re-

flects in this case, very candidly, a judgment by the President, which he has stated publicly, that in the midst of the many matters that he is responsible for, including, I must say, this matter, as well as all those matters of state on which he spends his time and to which he devotes his energy, he could no longer spend any of that time and any of that energy on the Jones case.

I am so hesitant to say this, but I really believe—please take it in the spirit it is meant—that to ask whether the settlement of this case reflects substantively on the merits of Ms. Jones' claim is not fair. The merits of Ms. Jones' claim were decided by Judge Wright. She concluded that there were none. And I really do believe that to ask whether the President's decision to settle is somehow a reflection on the merits, contrary to those reached by Judge Wright, is simply not the case.

The CHIEF JUSTICE. This is a question to the White House counsel from Senators JOHNSON and LEAHY:

A few minutes ago, Manager HUTCHINSON stated that he would be more confident of obtaining a conviction for obstruction of justice in a court than he is in the Senate. Can that statement be reconciled with the following exchange that occurred on the Sunday program "This Week" on January 17, 1999, in which Manager HUTCHINSON was asked, "On the case that you have against the President on obstruction of justice, not the perjury, would you be confident of a conviction in a criminal court," and Manager HUTCHINSON said, "No, I would not"?

Mr. Manager HUTCHINSON. Mr. Chief Justice——

The CHIEF JUSTICE. It's addressed to the President's—is it the President's counsel? It is addressed to the President's counsel.

Mr. Manager HUTCHINSON. I believe under your ruling yesterday I can't object to questions.

The CHIEF JUSTICE. That is correct.

Mr. Manager HUTCHINSON. I would——

Mr. LEVIN. Objection.

Mr. REID. Objection.

Mr. LEVIN. I object to this, if he is unable to object, to make an objection in any other form.

The CHIEF JUSTICE. The Parliamentarian advises me that the manager may make an objection to the question being answered.

Mr. REID. Nothing being answered.

The CHIEF JUSTICE. I have second thoughts, frankly. That ruling is based on a very Delphic, almost incomprehensible statement that Salmon Chase made during the trial of Andrew Johnson. And I think the correct response is that the managers do not have a right to object to a question by the Senator. So I rule the objection out of order.

Mrs. BOXER. Regular order.

Ms. Counsel MILLS. I just wanted to address, for a second, Manager HUTCHINSON's comments with regard to 1503. And he cited a 1987 case. In 1995, I think, as we talked a little bit about, and the House managers had discussed, Aguilar came down. And in that case the issue was, Was there sufficient nexus between the actual conduct of the person involved and the proceeding? And in particular, I am just going to read to you for 1 minute from the case law.

The Government argues that respondent "understood that his false statements would be provided to the grand jury" and that he made [these] statements . . . to

thwart the grand jury investigation and not just the FBI investigation. . . . The Government supports its argument with . . . the transcript . . .

They go through the discussion that was between the judge and the agent in which the judge specifically asked whether or not he was a target for the grand jury investigation, and the agent responded:

There is a grand jury meeting. Convening I guess that's the correct word. . . . [E]vidence will be heard . . . I'm sure on this issue.

So, in other words, the person making the statement knew at that point that there was potentially the possibility that his testimony would be presented to the grand jury, and the court ruled, as I talked to you a little bit about during my presentation before, that that was an insufficient nexus for there to prove a violation of 1503.

The CHIEF JUSTICE. This question is from Senators HELMS and STEVENS to the House managers.

Do you have any comment upon the answer just given by the President's counsel?

Mr. Manager HUTCHINSON. Thank you, Mr. Chief Justice.

First, I want to thank Ms. Mills for the courtesy she extended to me just a moment ago. And in our exchange, and Mr. Chief Justice, what I started to state my objection was, was really not to the question at that point, but I was just going to make the reference to the anticipated answer that the statement on "This Week with Sam and Cokie" was not exactly a part of this record. We are to be debating the facts of this case, and Ms. Mills was kind enough not to go into that. I think she was going to make the point that the answer I made was in reference to the need to call witnesses; that how confident can you be in any case without calling a witness so the jury can hear it?

Let me go back to what Ms. Mills said. She did cite the United States v. Aguilar, and I wish the Chief Justice—since he wrote the opinion—could give us a lecture on that particular decision. I feel maybe we should not be talking about this. But I read that opinion as totally consistent with the United States v. Shannon and that the law is clear, that if this body were to apply 18 U.S.C., section 1503, that a conviction would obtain, but again this is a body gathered for the purpose of consideration of an impeachable offense.

I also yield to Mr. GRAHAM on that point.

Mr. Manager GRAHAM. This is Saturday at 12:30 and a lot of people are probably watching with interest what is going on. Let's talk about the law just for a moment in a way that we all can understand when this thing is over with.

It is a long time since I have been in law school, but I liked the exchange between the professor and the students because you kind of understood what the law was about at the end of the day. Witness tampering is designed—the statute is designed to do what? As Senator Bumpers and I would say in Arkansas and South Carolina, "messin' with people." We can elevate that a little bit and say that the witness tampering statutes that we are talking about here are designed to make sure we get to the truth. Section 1512 is in the conjunctive, part (b): "Whoever knowingly uses intimidation or physical force."

That is one thing you don't want to happen here. You never want anybody to go up to a potential witness and threaten through force or intimidation to tell something that is not true. So that is out of bounds. That is illegal.

Or "corruptly persuades"—now, what does that mean? There are some cases that talk about what that means. That means if the person has an intent, an evil intent or an improper purpose to persuade somebody without force or intimidation, that that is a crime.

Or listen to this: "Engages in misleading conduct toward another person with the intent to influence or prevent the testimony of any person in an official proceeding."

What are we getting to there, ladies and gentlemen? What the law says, if you go to a person who likes you, who is your friend, who trusts you, and you try to get them to tell a story—through misleading them—that is not true, that is a crime.

The marvelous thing about the law is that it is based in common sense. It is very obvious to us we don't want somebody to tell a story that is not true. It is also obvious to us that we don't want to take personal relationships and misuse them to get false testimony out into a courtroom.

So if you go back to your secretary—who trusts you, who likes you, who admires you—and you try to mislead them by telling a scenario that is not true, and you believe that they may appear in court one day, what you have done is very wrong, because what you have done is you have planted the seed of a lie in a way that we say is illegal.

So, if you believe the President of the United States was not refreshing his memory when he told Betty Currie, "She wanted to have sex with me and I couldn't do that. I never touched her, did I, Betty?" If you believe that is not to refresh his memory, if you believe that was misleading, and you believe that he had reason to believe she was going to be a witness because of his own conduct, then he is guilty.

The CHIEF JUSTICE. This question is from Senator KERREY of Nebraska to the counsel for the President.

Could you elaborate on your comments about the settlement of the Jones case, focusing on the reality, for example, that corporations in this country routinely settle cases they regard as utterly without merit, simply to spare the costs of defense, public embarrassment, and for other reasons?

Mr. Counsel RUFF. Mr. Chief Justice, I think far better than I did, the Senator from Nebraska has already elaborated on my answer. I think all of us who have been involved, either as lawyers or as parties, unhappily, in litigation know the burden that it imposes, and one can only imagine—I am barely able to—a special burden that it places on a President to be immersed in this kind of litigation.

We take, I think, as a basic understanding in our jurisprudence that, as a matter of law, the settlement of a case is not probative of any belief on either side about the strengths or weaknesses, but what it is, as a matter of law, is probably less relevant than what it is to this body or to the American public's perception.

But underlying the law about what one can do in litigation in using a decision to settle is, I think, a commonsense judgment that everybody, whether it be a large corporation or individual or the

President of the United States, makes a judgment about where his or her resources should be expended—and I don't mean simply resources in terms of dollars, although they are secondly important—but resources in terms of energy, time, worry, interference with the day-to-day business that all of us have to conduct.

And I think it is fair to say that it is those factors, those very commonsense factors, the ones we would all weigh, in different circumstances at different settings if we were caught up in litigation, that inform your judgment about what you should or, in my judgment, should not take from the fact that the President settled this case.

The CHIEF JUSTICE. This question is from Senators NICKLES, WARNER, HELMS, INHOFE, and THURMOND to counsel for the President.

Members of the armed services are presently removed from service for improper sexual conduct and/or for perjury. If the President is acquitted by the Senate, would not it result in a lower standard of conduct for the Commander in Chief than the other 1.3 million members of the armed services?

Mr. Counsel RUFF. Mr. Chief Justice, this, of course, is a question legitimately asked but I also think legitimately answered no. We all understand entirely what rules are imposed on members of the armed services. Indeed, every member of the Federal civil service, every member of a private company, when they engage in certain conduct, may be sanctioned for it.

In the military, I understand—as do the Senators who have much greater personal and institutional experience with our Armed Forces than I—the importance of maintaining due order and discipline in the armed services, and also the importance of believing that nothing that the Commander in Chief does or says should ever undermine the strength of our Armed Forces, their cohesiveness, or their belief in the rules and integrity of the rules that govern them.

But, that said, I do not believe, as a matter of what will flow from an acquittal of the President, who is, indeed, Commander in Chief, that that will in fact undermine the good order and discipline of the Army. But if I am wrong in some fashion about that, if my understanding of the process is flawed—and it may well be—we, nonetheless, have to ask the question which I think is implicit in the question that was put to me: Because of the rules that apply to members of the Armed Forces, does it follow that because a sergeant, or a lieutenant, or a general, or an admiral will suffer in his career, that we must go back to the framers who wrote the impeachment clause and say they must have expected that the Commander in Chief, the President, would be removed for the same conduct? They had an Armed Forces then. Indeed, they were probably more intimately involved with that, having just come through the Revolution, than Presidents and leaders of the country have been in the following 210 years. They surely understood that there was a constitutional and societal difference between the President in his role as Commander in Chief and the President in his role as the leader of the country, on the one hand, and those to whom rules of discipline had to apply in order to secure the strongest and best Armed Forces that we could secure.

It is, in a sense, I suppose, not an easy answer to give, because members of the Armed Forces put their lives on the line, and we

want them to feel that they are being treated fairly. But at the end of the day, it cannot be that the President of the United States is removable for conduct that would adversely affect a career of a member of the military.

There may be occasions on which the President engages in such horrific conduct that he ought to be removed, and the same would happen to an admiral, or a general, or the Chief of Staff of the Joint Chiefs, or the highest military member that you can contemplate. But that doesn't mean that this conduct is transposed from the world of the military into the world of the Constitution in such a way that the President, even if he is our Commander in Chief, should be removed from office, because I think that judgment would be inconsistent with the judgment made by the framers.

RECESS

Mr. LOTT. Mr. Chief Justice, I suggest that this would be an excellent time to take a 1-hour break for lunch.

There being no objection, at 12:44 p.m., the Senate recessed until 1:45 p.m.; whereupon, the Senate reassembled when called to order by the Chief Justice.

The CHIEF JUSTICE. The Chair recognizes the majority leader.

Mr. LOTT. Thank you, Mr. Chief Justice.

Mr. Chief Justice, we are ready momentarily to begin with the questioning period again. I believe the first question will come through Senator DASCHLE.

I do want to say to our colleagues that any Senator is entitled to propound a question on both sides, and so we will give you every opportunity to do that. Again, it is our intent to go today not later than 4 o'clock, and if additional time is needed for questions, it will have to go over until Monday. We have some questions that have already been propounded that we would like to put to one side or the other, but at some point I think we will have a sense that maybe the basic questions have been asked.

So if any Senator on either side feels strongly about a particular question, he or she may want to be thinking about how and when they insist that it be offered. But I think a lot of ground has been covered. I hope that within a reasonable period of time the questions that Senators have will be given and we will have a response, and then we will make a decision on how to proceed from there.

I yield, Mr. Chief Justice.

The CHIEF JUSTICE. This is a question from Senator BINGAMAN to counsel for the President.

When Samuel Dash resigned as adviser to the independent counsel, he wrote in the letter of resignation that he was doing so because the independent counsel had become an advocate and had "unlawfully intruded on the power of impeachment which the Constitution gives solely to the House."

In using his power to assist one party to the pending impeachment trial before the Senate, do you believe he has unlawfully intruded on the power of the Senate to try impeachments?

Mr. Counsel RUFF. Mr. Chief Justice, Senators, the independent counsel statute gives the independent counsel in some sense almost unbounded power to investigate the President and other high officials of Government. It does not give him and has never given him

unbounded power even to the extent that he has become immersed in the impeachment proceedings in the House. For the statute itself says not you shall become the 436th Member of the House, not that impeachment is vested in the independent counsel, but that impeachment is vested in the House and trial in the Senate.

We were, obviously, dismayed at the role that the independent counsel chose to follow rather than simply sending information to the House that might bear on possible impeachable offenses but, rather, to drive his van up to the building and unload unscreened, undiluted boxes of information which thereafter made their way, at least in part, into the public domain.

But surely it was a shock to all of us, at least on this side, to learn yesterday evening that playing a role in the House proceedings had now become a role in this Chamber, that the independent counsel was using not only his powers of coercion but calling on the U.S. district court to assist him and, in turn, enabling the managers not simply, as they would have it, to do a little work product, to do a little meeting and greeting, to do a little saying hello and a little chatting with someone who may be a witness before this body but, rather, saying to this witness: I hold your life in my hands and I'm going to transfer that power to the managers for the House of Representatives.

The managers have said we are engaged in an adversary process here, and they themselves have talked long and loud today about letting them play out the process that any lawyer would play out preparing for trial. Well, no other lawyer that I know of gets to have a prosecutor sitting in a room with him and saying to the witness: Talk to these people or your immunity deal is gone and you may go to jail.

Now, we have been accused by Manager HUTCHINSON and others of always talking about process, of always falling back on process. Well, I suggest, Senators, that process is what our justice system is all about. Process is what we have always relied on to protect everyone against the vaunted power of the state in this case; not just the managers, but the state embodied in the independent counsel.

But in this case it is more than just a call for due process, for fairness, because it is going to have a direct and immediate impact on the facts as we learn them, as they learn them, and most importantly as you learn them. Can you imagine—can you imagine what it is going to be like for Monica Lewinsky to be sitting in a room with the 13 managers, or however many there are, and the independent counsel, and his lawyers, knowing the threat that she is under, knowing how she got into that room? Can we have any reason to believe that what comes out of that process will be the fair, unvarnished truth? Or will she, of necessity, be looking over her shoulder and saying I better not put one foot wrong because the independent counsel is sitting there watching, and he has already told me that this deal is gone if I don't cooperate with the House managers.

Process and truth, they are inextricably linked, but not—not if the independent counsel moves to that side of the room and becomes the moving force in the development of the truth and the facts as this body is entitled to know them.

Accuse us of talking about process if you will; accuse us, if you will, of falling back on process. We do it proudly because process is what this is all about, because process leads to truth. But not that way.

The CHIEF JUSTICE. This is a question from Senators SPECTER, FRIST, SMITH of New Hampshire, INHOFE, LUGAR, BROWNBACK, ROTH, and CRAPO to counsel for the President:

In arguing that an impeachable offense involves only a public duty, what is your best argument that a public duty is not involved in the President's constitutional duty to execute the laws? At a minimum, doesn't the President have a duty not to violate the laws under the constitutional responsibility to execute the laws?

Mr. Counsel RUFF. It can't be. It can't be that if the President violates the law and thus violates his duty faithfully to carry out the laws, he is removed from office. Because that would literally encompass virtually every law, every regulation, every policy, every guideline that you could imagine that he is responsible for carrying out in the executive branch. If that were so, it would have been very simple for the framers to say the President shall be impeached for treason, bribery and failure to carry out his oath faithfully to execute the laws. They wrote that. They could have incorporated it into the impeachment clause if they had wished, and they chose not to.

So that if, in fact, you suggest that a failure to faithfully execute the laws inevitably leads to a decision that an impeachable and removable offense has been committed, I suggest with all respect that you have simply eliminated the impact of the words "treason, bribery and other high crimes and misdemeanors."

Now, you may well judge within that setting—that is, within that constitutional standard "other high crimes and misdemeanors"—that some particular violation of law warrants removal. But it surely can't be, just looking back at what the framers did and what the words themselves mean, that any violation, even if you were to find one, must lead you to conclude that having therefore violated his responsibility to faithfully execute the laws, removal must follow.

The framers knew what the other parts of the Constitution said, and they specifically chose the words they chose, intending that they cover only the most egregious violations of the public law and public trust that they could conceive of.

The CHIEF JUSTICE. This is from Senator GRAHAM to counsel for President Clinton:

In the event the Senate determines the removal of the President is not warranted, are there any constitutional impediments to the following action: (1) a formal motion of censure; (2) a motion other than censure incorporating the Senate's acknowledgement and disapproval of the President's conduct; (3) a motion requiring a formal Presidential apology or any other statement accepting the judgment of the Senate; or (4) a motion requiring the President to state that he will not accept a pardon for any previous criminal activities.

Assuming that one or more of the above actions are constitutional, are there any other serious policy concerns about the advisability of the Senate formally adopting a legislative sanction of the President that falls outside the scope of the constitutional sanction of removal from office?

Mr. GRAMM addressed the Chair.

The CHIEF JUSTICE. The Chair recognizes the Senator from Texas.

Mr. GRAMM. Mr. President, I would like the record to show that that was Senator GRAHAM of Florida. [Laughter.]

The CHIEF JUSTICE. The record may so show.

Mr. Counsel RUFF. Senator GRAMM, my apologies. I assumed since Senator DASCHLE sent it up it was probably from this side, but I am glad you clarified the record.

That question probably requires much more constitutional learning to answer in great detail than I possess, but let me give it a try. And the easiest one for me to answer is the fourth part: Would it be appropriate, in some fashion, for the President formally to state that he would not accept a pardon?

I have stated formally on behalf of the President in response to a very specific question by the House Judiciary Committee that he would not, and, indeed, we have said in this Chamber, and we have said in other places, that the President is subject to the rule of law like any other citizen and would continue to be on January 21, 2001, and that he would submit himself to whatever law and whatever sanction or whatever prosecution the law would impose on him. He is prepared to defend himself in that forum at any time following the end of his tenure. And I committed on his behalf, and I have no doubt that he would so state himself, that he would not seek or accept a pardon.

I will not even begin to tread on the territory that is the Senate's jurisdiction and the issues that it takes unto itself, much less give it advice about what it is possible or not possible to do, except to venture this. I see no constitutional barrier, certainly, to the Senate's passing a censure motion in whatever form it chooses—whether adopting language from the articles or creating language of its own. We might at the end of the day disagree with you about whether the language is justified or whether it accurately reflects the facts, but there is nothing in the Constitution, I believe, that prevents this body from undertaking that task.

With respect to a formal acknowledgment, there I suppose the interplay between the legislative and the executive branch becomes more tenuous. But to the extent that whatever the Senate chooses to say in such a document needs to be acknowledged or recognized by the President, that can be done without entrenching on the separation of powers in that special uncertain area between the legislative and executive branches. I have no doubt that some process can be worked out that meets the Senate's needs. I say this all in the sort of vast limbo of hypothesis, because obviously I am answering both somewhat off the cuff and without knowing what language we are talking about.

But the core position, as we see it, is that nothing stands in the way of this body from voicing its sentiments. Indeed, I have said in the House of Representatives that I thought a censure was an appropriate response, and the President has said he is prepared to accept the censure. I have no doubt, although that was said in the context of the proceedings in the House, it surely is applicable as well to anything that this body chooses to do.

The CHIEF JUSTICE. This is a question from Senator THOMPSON to the House managers:

Do you have any comment on the answer given by the President's counsel with regard to the Office of Independent Counsel?

Mr. Manager McCOLLUM. Mr. Chief Justice, Senators, thank you for that question. It is our judgment—and I think a fair judgment—that we should be allowed and are permitted, under any of the rules normal to this, to request of the Office of Independent Counsel the opportunity to talk to Monica Lewinsky, which we otherwise apparently were not going to be able to have as a normal course of preparation.

It makes me wonder—with all of the complaints that are going on here from the White House attorneys about this and their desire not to have witnesses—what they are afraid of. Are they afraid of our talking to Monica Lewinsky? Are they afraid of the deposition of Monica Lewinsky? Are they afraid of what she might say out here? I don't think they should be, but they appear to be.

We are not doing anything abnormal. We are exercising our privileges, our rights. If it were a prosecutor and you had a prosecutorial arm, which you do in the case of the Independent Counsel Office, that had an immunity agreement, as there is in this case, you certainly would not hesitate if you had a recalcitrant witness who you needed to call to utilize that immunity agreement and have the opportunity to discuss the matter with that witness, and you certainly would not hesitate if you needed to use that immunity agreement to assure truthful testimony in any proceeding that was going on.

After all, that is the purpose of the immunity agreement. It means that the witness is probably much more likely to be telling the truth than under any other circumstances, which is why counsels frequently argue immunity agreements as a reason why a particular witness is more credible than he or she might otherwise be if it were not for that agreement.

So I think there is an awful lot being said today about our meeting that we want to have with Ms. Lewinsky to prepare her as a witness. I want to tell you all it is being done, in my judgment, with all due respect to those who are doing it, principally because of the concerns they don't want us to have that opportunity or they want to cast some aspersion or doubt, or whatever.

We are not about to do anything improper. We can assure you of that. We would never do that. We are going to follow regular order and do this as good counsels would do in good faith, and in no way would we wish to do it otherwise, nor have we. Thank you.

The CHIEF JUSTICE. This is a question of Senator BAUCUS to the House managers:

> In view of the direct election of the President, his popularity, and short duration of his term, and in view of the fact that, as House Manager GRAHAM stated, "reasonable people can differ in this case," please explain, precisely, how acquitting the President will result in an immediate threat to the stability of our Government.

Mr. Manager HYDE. Mr. Chief Justice, ladies and gentlemen of the Senate, I don't think anyone contends that if the President is acquitted that suddenly it is apocalypse now or the Republic will be threatened from without or from within. I think erosion can happen very slowly and very deliberately. The problem that I have is with this office being fulfilled by someone who has a double responsibility.

The first responsibility is to take care that the laws be faithfully executed. He is the only person in the country, in the world, who

has that compact with the American people. The other, of course, is his oath to preserve, protect and defend the Constitution. He is the national role model, he is the man, he is the flagbearer in front of our country. He is the person, his office is the person every parent says to their little child, "I hope you grow up and be President of the United States some day." We do nothing as important as raising our kids, and the President is the role model for every kid in the country.

When you have a President who lies and lies and lies under oath—and that is the key phrase, "under oath." I don't care about his private life or matters that are not public. But when he takes an oath to tell the truth, the whole truth, nothing but the truth and then lies and lies and lies, what kind of a lesson is that for our kids and our grandkids? What does it do to the rule of law?

Injustice is a terrible thing. The longer you live, the more you can encounter it. Injustice, abuse, oppression, and the law is what protects you; the law, having resort to an objective standard of morality in action. And when you are sworn to take care that the laws are faithfully executed, how do you reconcile the conduct of perjury and obstruction of justice with that obligation?

I have a suggestion. Let's just tear it out of the Constitution. Tear out that "take care to see that the laws are faithfully executed." It is wrong. It is an example we are setting for millions of kids that if the President can do it, you can do it. What do you say to master sergeants who have their careers destroyed because they hit on an inferior member of the military? We are setting the parameters of permissible Presidential conduct for the one office that ought to gleam in the sunlight. And the kids, that is what moves me, the kids.

The CHIEF JUSTICE. This question is from Senators NICKLES, WARNER, CRAPO, HELMS, INHOFE, and THURMOND to the House managers:

> Would you like to comment on the remarks of Counsel Ruff concerning the impact of an acquittal of the President accused of improper sexual conduct and/or perjury and obstruction on the Armed Forces?

Mr. Manager BUYER. Mr. Chief Justice, I would like to thank the Senators for the question, because I believe it is also insightful.

The question of double standards or establishing lower standards, I believe, is extraordinarily important. The defense asserted—and it is hard for me to believe—but they are asking you to set a higher standard for judges and a lower standard for a President who nominates them to you, asking you—they think that we can set a higher standard for law enforcement, yet establish a lower standard for the Chief Executive or the chief law enforcement officer who has the duty to faithfully see that the laws are executed; set a higher standard for military personnel, and then a lower standard for the Commander in Chief who must make the painful decisions to send them into battle.

Now, the precedents in impeachment trials here in the Senate, the judgment of the Armed Services Committee and the Senate regarding the standards for promotion, have been otherwise than that which Mr. Ruff has asserted.

We must confront the fact that the President is the Commander in Chief. And I believe that it is perfectly acceptable of the Amer-

ican people to demand of the military the highest standard, which also means that those who find themselves in positions of responsibility in the Pentagon who are in civilian leadership must also live by such exemplary conduct and standards. The high character of military officers is a safeguard of the character of a nation.

The Senate, which must ratify the officers' promotion list, has repeatedly found that anything less than exemplary conduct is therefore unworthy of a commission or further promotion. I recall when I first came to Congress in 1992, there were many making a big to-do over Tailhook. Remember? And it was serious. There are still remnants around of Tailhook because there are still those who are screening the officers' promotion. If you were within 100 miles of Tailhook, look out for your career. That needs to be put to bed.

Then I was given a duty to ensure that after Aberdeen broke and the sexual misconduct in the military—whether it was at Fort Jackson, Aberdeen, or at other places—I spent 18 months out on the road to ensure that the policies of the military were fair and the treatment of equal dignity in the workplace among men and women. We cannot forget that.

You see, we also must recognize and must be candid with the harsh reality that the officers and NCOs are human and not without fault, folly, and failings. I believe, though, it is the aspirations of high ideals that are important for each of us, but more so to the military in order to keep the trust and the public faith in the military. You see, a soldier, a sailor, an airman or marine is prepared to lay down his or her life to defend the Constitution. And it is the devotion and the fidelity to the oath without mental reservation that is the epitome of character.

Now, the President is not and should not be subject to the Uniform Code of Military Justice. And I concur with Mr. Ruff when he made that point. And the President is not an actual member of the military. But we have a unique system in the world. We have that civilian control of the military, and it works. But we also must recognize and be cognizant that the President, however, is at the pinnacle, he is at the top of the chain of command. And that is what I learned about, being on the road for 18 months, and How do we make corrections? and How do you set the proper dignity in the workplace?

It doesn't matter if it is your own office or, in fact, if you are the President as Commander in Chief. Whoever leads you sets the tenor of those who must follow. You see, the message is that the military personnel do look to the Commander in Chief to set the high standard of moral and ethical behavior. The military personnel are required to set a high standard of conduct in order to set the example to those they lead. Adherence to high standards is the fabric of good order and discipline. When military leaders fall short of this ideal, then there is confusion and disruption in the ranks. And today many do see a double standard. There is a double standard because the Commander in Chief has allegedly conducted himself in a manner that would be a court-martial offense for military personnel having been accused of the very same thing.

The President's actions have had an intangible and coercive impact upon military personnel. To turn a blind eye and a deaf ear to it would be shame on us. The question soldiers and sailors ask

is: I took an oath to swear to tell the truth. And I also took an oath to uphold the Constitution. How can this President take the same oath and not be truthful and remain in office? If I were to have done what the President did, I would be court-martialed.

You see, we also have to recognize that each of the services are recruiting young people all across the Nation. At boot camp they infuse these young people with the moral values of honor, courage and commitment, and they're teaching self-restraint, discipline and self-sacrifice. Military leaders are required to provide a good example to those young recruits, yet when they look up the chain of command, all the way to the Commander in Chief, they see a double standard at the top. Again, it is the President who sets the tone and tenor in the military, just as he does for law enforcement.

I believe the President has violated this sacred trust between the leaders and those he was entrusted to lead. I also spoke in my presentation that it was the President's self-inflicted wounds that have called his own credibility into question not only in his decisionmaking process, but with regard to security policies.

The CHIEF JUSTICE. The Chair has the view that you have answered the question.

Mr. Manager BUYER. Thank you, Mr. Chief Justice.

The CHIEF JUSTICE. This is a question from Senators TORRICELLI and KOHL to the President's counsel:

> At the outset of the House proceedings, a member of the majority, now a manager, stated: "The solemn duty that confronts us requires that we attain a heroic level of bipartisanship and that we conduct our deliberations in a fair, full and independent manner. . . . The American people deserve a competent, independent, and bipartisan review of the Independent Counsel's report. They must have confidence in the process. Politics must be checked at the door."
>
> In evaluating the case against the President, should the Senate take into account: (a) the partisan nature of the proceedings in the House, or (b) the public's "lack of confidence" in the proceedings thus far?

Mr. Counsel KENDALL. Mr. Chief Justice, I think that this body has to take into consideration what brought these articles here, and that is the action both of the independent counsel and the House of Representatives. I think when fairly considered, when you look at the actions of both, you find an absence of fairness and bipartisanship.

The independent counsel investigated this case for 8 months. It developed every bit of evidence it could that was negative, derogatory, or prejudicial, and it put them into those five volumes. It did not pursue exculpatory leads. It did not follow up evidence that might lead to evidence of innocence. And it downplayed, when it came to write the referral, significant testimony which was exculpatory or helpful.

I think the independent counsel's process was really epitomized by Ms. Lewinsky's statement that nobody asked her to lie or had promised her a job for silence. You see, the independent counsel didn't bring out that testimony. In fact, it came out when the independent counsel was through examining Ms. Lewinsky in the grand jury. I want to read you a very short part of that, page 1161 of the appendix.

Independent counsel prosecutor says, "We don't have any further questions," and a grand juror pipes up, "Could I ask one?"

Monica, is there anything that you would like to add to your prior testimony, either today or the last time you were here, or anything that you think needs to be amplified on or clarified? I just want to give you the fullest opportunity.

Here is what Ms. Lewinsky says:

I would. I think because of the public nature of how this investigation has been and what the charges aired, that I would just like to say that no one ever asked me to lie and I was never promised a job for my silence. And that I'm sorry. I'm really sorry for everything that's happened.

Now, we requested the independent counsel, before he sent the referral to the House of Representatives, for an opportunity to review that. We were denied this.

I think if you compare what happened here with what happened in 1974 when Special Prosecutor Jaworski sent a transmission of evidence to the House Judiciary Committee, the comparison is very revealing. Then Special Prosecutor Jaworski sent only a road map of the evidence, a description of what was in the record. Judge Sirica reviewed that at a hearing where White House counsel were present. Judge Sirica then said it was a fair, impartial summary and transmitted it on to the House Judiciary Committee. Here, without review either by the presiding judge or the grand jury, a referral was sent to the House that was a one-sided, unfair prosecutorial summary.

When the House managers speak of the need for discovery, they have no such need. Everything prejudicial that could be found through an unlimited budget and seemingly endless investigation has been found and put there, tied up with a red ribbon for you.

In terms of bipartisanship in the House, I think that speaks for itself. I don't think this was a bipartisan process. I don't think it was a bipartisan result. I think, though, it rests with this body to try the case. It is clear under the Constitution that this body has the power, the sole power, to try impeachment. The Chief Justice in the Nixon case made that very clear.

I am not going to comment on the independent counsel's assistance to the House manager with Ms. Lewinsky. I think that is for you to decide whether that is consonant with how you decide the case ought to be tried. But I think that the presentation of the articles to this body has been neither fair nor bipartisan.

The CHIEF JUSTICE. This is a question from Senator LOTT to the House managers:

Do you have any comment on the answer just given by the President's counsel?

Mr. Manager HYDE. Mr. Chief Justice, Members of the Senate, I welcome this opportunity to fill in a considerable gap in the record.

Mr. Counsel Kendall said earlier today or perhaps yesterday—it was yesterday—"We never had a chance to call witnesses ourselves, to examine them, to cross-examine them, to subpoena documentary evidence, at no point in this process."

On October 5, 1998, the House Judiciary Committee passed House Resolution 581 by voice vote, the impeachment inquiry procedure, which included the right to call witnesses for the President.

On October 21, the House Judiciary Committee staff met with Mr. Ruff, Mr. Kendall, and Mr. Craig. At that time, the Judiciary Committee staff asked the White House to provide any exculpatory

information, provide a list of any witnesses they wanted to call, without result.

On November 9, the House Judiciary Committee wrote to Messrs. Ruff, Kendall, and Craig and again informed them of the President's right to call witnesses.

On November 19, Independent Counsel Starr testified 12 hours before the House Committee on the Judiciary. President's counsel was given the opportunity to question the independent counsel. He did not ask a single question relating to the facts of the independent counsel's allegations against the President. Now, the Democrats have Mr. Kendall, they had Abbe Lowell; we had Dave Schippers. That is not an invidious comparison.

On November 25, I wrote a letter to the President asking the President, among other things, to provide any exculpatory information and inform the committee of any witnesses it wanted to call, without success.

On December 4, two working days before the presentation of the President to the Judiciary Committee, counsel for the President requested to put on 15 witnesses. The White House was allowed to present all 15 witnesses. Not a single one of those was a fact witness.

Lastly, I quote from a letter from Mr. Kendall to Mr. Bittman. It is in volume III, part 2 of 2, page 2326:

> That you now request we submit exculpatory evidence is perfectly consonant with the occasionally "Alice in Wonderland" nature of this whole enterprise. I am not aware of anything that the President needs to exculpate.

The CHIEF JUSTICE. This question is from Senator LEAHY to the White House counsel:

> The managers argued in response to a previous question that would set a bad example for the military to acquit the President. Given that argument, how could you reconcile the statement by Manager HYDE after Caspar Weinberger was pardoned by President Bush of multiple criminal violations, including perjury, that, "I'm glad the President had the chutzpa to do it. The prosecution of Weinberger was political in nature, an effort to get at Ronald Reagan. I just wish us out of this mess, the 6 years and this $30 or $40 million that has been spent by independent counsel Lawrence E. Walsh"?

Mr. Counsel RUFF. The question, in virtually every respect, speaks for itself.

But I would make this point because I think it fleshes out a bit my earlier answer and responds in some fashion to the argument made by the managers on this very issue. I was probably too lawyerly, as is my wont, in responding to the earlier question on this issue by Senators WARNER and THURMOND, because I think the one point that needs to be made in the context of Senator LEAHY's question which goes to the leadership of the Secretary of Defense and the issue of what it means to undertake the removal of a President, the distinction that I think we all need to hold on to that I probably glided over too rapidly in my earlier answer, is that the President of the United States is elected by the people of the United States.

He appoints the Secretary of Defense; he appoints the officers in the military; he appoints the judges. And the Senate plays a role in that process by approving his choices, or occasionally not approving his choices. But there is only one person who is put in his job with the voice of the people, and however we may be concerned, as

rightly we should, if that person oversteps the bounds either of his office or his personal conduct, to say that there is some one-to-one, or any other number you can think of, comparison between the impact of enforcing the law on those civilian and military personnel who serve our country and the very different question of whether the voice of the people will be stilled by removing the President is the point on which I think this body needs to focus.

The CHIEF JUSTICE. This question is from Senators KYL and MACK to counsel for the President:

Mr. Ruff said President Clinton was never asked in the grand jury whether everything he testified to in the Jones deposition was true. If he were asked, would he say it was all true? Would the President be willing to answer an interrogatory from the Senate asking that question?

Mr. Counsel CRAIG. Senator, it is true that he testified that he tried to be truthful in the Jones deposition, that it was his purpose to be accurate in the Jones deposition. He tried to navigate his way through a minefield without violating the law, and believes that he did. There is no statement in that testimony in the grand jury that reaffirms, ratifies, and confirms all of his testimony in the Jones deposition.

Now, we would be happy to take questions and get responses to you, consult the President, if you would like to submit them.

The CHIEF JUSTICE. This is a question from Senator MURRAY to the White House counsel:

Has Ms. Lewinsky ever claimed that she was sexually harassed by the President?

Mr. Counsel KENDALL. Mr. Chief Justice, Ms. Lewinsky has made no such claim. What happened between the President and her was improper, but it was consensual. To say that does not excuse it or sugarcoat it or justify it, but it does, I think, put it in the proper context. She has never claimed that she has any evidence at all relevant to sexual harassment by the President. When the President—and I went through this on Thursday in respect to the obstruction of justice allegation, about the President stating that she could file an affidavit. The President and Ms. Lewinsky reasonably believe that she could have filed a limited but truthful affidavit.

And I think you have to look to the fact that the Jones case was not a class action. It was a suit only about what Ms. Jones claimed happened in May 1991 in a Little Rock hotel room. The December 11 ruling on discovery was a ruling not only on admissibility, but discovery. The President believed that an affidavit—a truthful affidavit—might be successful—not that it would, but that it might be.

Now, in filing such an affidavit, in preparing it, no particular form was necessary. There was nothing to dictate what had to go in and what had to go out of it. There were many witnesses on the witness list. The end of discovery was approaching, and there was at least some chance, they thought, that a factual affidavit, which was limited, might accomplish the purpose. And I think this is confirmed by the fact that when Judge Wright considered whether to order Ms. Lewinsky's deposition, she issued a ruling on January 29 saying that the deposition would not go forward because evidence from Ms. Lewinsky would not be admissible at the Paula Jones

trial because it was both irrelevant to the court allegations and it was inadmissible as extrinsic evidence of other facts.

So I think that Ms. Lewinsky had nothing whatsoever to offer on the critical issue in the Paula Jones case, which was an issue of sexual harassment.

The CHIEF JUSTICE. This is a question by Senator SHELBY to the House managers:

> Would a verdict of not guilty be a stronger message of vindication for the President than a motion to dismiss, or, in the alternative, a motion to adjourn? And what are the constitutional implications, if any, if a motion to dismiss prevailed, short of concluding the trial?

Mr. Manager HYDE. Mr. Chief Justice, Members of the Senate, there are various options. It is really a misdirected question, if I may say, to ask us to suggest the consequences of solutions to this dilemma that we are in. I think the beauty—and that is not the word—I think the advantage of proceeding with the articles of impeachment is it is consonant with the Constitution. It is simple; it is clean: either guilty or not guilty.

The consequences of that verdict, of course, are up to any individual who casts a vote. Now, I have heard the word "censure" sometime before. You gentlemen and ladies do anything you want to do. It is your power, it is your authority, it is in your yard, but you have to deal with the Constitution, no matter what you do.

You have a problem of a bill of attainder, a problem of the separation of powers, and you have a problem that any censure, to be meaningful, has to at least damage the President's reputation; and that becomes, in my judgment, a bill of attainder, but that, again, is up to you. The consequences, I don't think, will harm us, whatever you do. We have done our best. We have lived up to our responsibility under the Constitution, and all we ask is that you live up to your responsibilities under the Constitution and give us a trial. I am sure you will.

The CHIEF JUSTICE. This is a question to the President's counsel from Senator LEVIN:

> Monica Lewinsky has explicitly said in her handwritten proffer that "no one encouraged" her to lie. Yet, House Manager ASA HUTCHINSON claimed to the Senate, using inferences, that Ms. Lewinsky was "encouraged" to lie. Do the House managers argue that such inferences are as credible as Ms. Lewinsky's direct testimony to the contrary?

Mr. Counsel RUFF. I think Senator LEVIN's question goes to the heart of much of what we have been saying for the last few days. If, in fact, you look at the five volumes stacked up in front of my colleague, Mr. Kendall, you will see Ms. Lewinsky say not just once, but many times, in essence: I was never told to, never encouraged to lie, never traded an affidavit for a job, never did any of the things that lie at the very heart of the managers' case. And so what do we have, then? We have the managers trying to snatch a bit of evidence here, a bit of speculation there, or a bit of extrapolation over there, and say, well, she really didn't mean it when she said several times quite directly, "Nobody ever told me or encouraged me to lie."

It is possible, of course, whenever one deals with circumstantial evidence, to make reasonable leaps from that evidence to some viable conclusion. But I think most courts that we are familiar with—

and those of you who practice law are familiar with—would have a good deal of difficulty in concluding that if I take a little bit here and a little bit there and a little bit over there, pull them all together into some vast speculation about what was really in someone's mind, and on the other side I have the person saying what is in her mind and saying the opposite, I don't think that case would ever get to the jury.

And maybe it is one of the things that worries me just a little bit about the normal, everyday—we do it all the time in conference between the managers and the independent counsel and Ms. Lewinsky—that maybe in that setting, to the independent counsel gently patting Ms. Lewinsky on the back and telling her it is time to cooperate, maybe the message will become closer to their side and their speculation, don't stay where you were, which is what you told the grand jury, the FBI, and us under oath and not under oath on multiple occasions, which is, indeed, "Nobody told me to, nobody encouraged me to lie."

The CHIEF JUSTICE. This is a question from Senator BOND to the House managers:

When Ms. Mills described the President's testimony before the Jones grand jury, she said the President was "surprised" by questions about Ms. Lewinsky. What evidence is there of the President's knowledge that Lewinsky questions would be asked? Is there evidence that he knew in advance the details of the Lewinsky affidavit which his counsel presented at the Jones deposition?

Mr. Manager HUTCHINSON. Thank you, Mr. Chief Justice.

There are numerous evidences in the record to show that the President was not surprised about the questions pertaining to Monica Lewinsky at the January 17 deposition. First of all, in regard to the affidavit testimony of Monica Lewinsky—I believe it was January 6—5th or 6th—it is that she discussed that with the President, signing that affidavit, and the content of the affidavit. That is whenever he made his statement, "I don't need to see it. I have seen 15 of them."

Again, we don't know what he is referring to in reference to that "15." But clearly, according to Monica Lewinsky's testimony, she went over the contents of that, even though she might not have had it in hand, with the President.

Also, circumstantially, there is a conversation between Mr. Jordan and the President during this time.

But in addition, let me just recall something I made reference to in my presentation—that a few days before the President's deposition testimony, that it was Michael Isikoff of a national publication who called Betty Currie and asked about courier records on the gifts. This startled Betty Currie, obviously, because the gifts at that point were under her bed. As she recalled, she probably told the President that. And then second, she went to see Vernon Jordan about that issue.

All of that leads you to believe, clearly, that the President fully knew that when he went into the deposition on January 17, that he would be asked time and time again about the specifics of his relationship with Monica Lewinsky.

So I think that addresses part of that question.

Let me remark on what Mr. Ruff just said—I am just constantly amazed—about our effort to interview witnesses, because yesterday

Mr. Ruff—I believe it was; it might have been Mr. Kendall; excuse me if I have the attribution wrong—but criticized us, saying they want to call witnesses but they have no clue what these witnesses would say. Do you recall that? That was the argument yesterday. And so, if we make an effort to determine what these witnesses would say, then we are criticized for trying to find out what they would say.

So I think that again it is more convenient to talk about what the managers are doing, what the process is, rather than the facts of obstruction.

The CHIEF JUSTICE. This is a question to the White House counsel from Senator KENNEDY:

> Would you please respond to Manager HYDE's suggestion that an acquittal would send a bad message to the children of the country, and to Manager HYDE's statements regarding the fairness of the process in the House of Representatives?

Mr. Counsel CRAIG. Mr. Chief Justice, thank you for that question.

Children—what do we tell the children? Well, ladies and gentlemen of the Senate, that is not an academic question for me and for my wife. I assume that is the case for many, many families all over this country. We happen to have quite a few children, and they are very young; they are under 12. And we talk about what is going on here. We talk about how important it is to tell the truth, and we talk about how wrong it was for the President of the United States not to tell the truth. And we think that we have learned a lot by going through that process. We have talked about what President Clinton did and why it was wrong.

With all due respect to the chairman of the House Judiciary Committee, I and my wife—and I don't think many parents when they raise their children rely every day on messages or resolutions from the Congress of the United States to tell them that it is important to teach children the importance of truth telling.

I am a little bit disappointed in the inference of the argument that those of us who oppose impeachment, for the reasons that you understand, somehow are sending a message to kids that it is OK not to tell the truth. I am a little bit disappointed in that argument, because I don't think that is the way the parents of this country feel. That is certainly not the way I feel. And I don't believe that impeachment is a question of what you tell your children about truth telling. Of course you tell your children to tell the truth. Of course you tell your children the difference between right and wrong. I am surprised that it is an issue here.

The second part of your question, Senator: I went through that House of Representatives experience, and I must say that I was disappointed in it, because we had been promised bipartisanship. When the Office of Independent Counsel sent its referral to the House of Representatives, White House counsel did not have access to that document before it was released to the world. When the Office of Independent Counsel sent its 60,000 pages, 19 boxes of evidence, to the House of Representatives, we were not given access, the way Members of the Judiciary Committee were, to all that material. We were given access to a very limited amount of material in the course of that process. In fact, much of that material we never had access to on behalf of the President.

We were disappointed that there was no actual discussion of the constitutional standards for impeachment before they went forward to vote on an impeachment inquiry. We thought that was the cart before the horse.

We were disappointed and we regretted that grand jury materials provided with promises of confidentiality were dumped into the public with salacious material, unfiltered by the House of Representatives and the Judiciary Committee, and we saw party line vote after party line vote after party line vote over and over and over again in the Judiciary Committee. We were disappointed that the depositions went forward without our participation. We were disappointed there was no definition of the scope of the inquiry. We were disappointed that there was no term of time, no limitation on either the scope or the time of this inquiry. And we were disappointed that there was no adequate notice of the charges.

There were two events that happened near the end of this process that I think were particularly disappointing to us. One was that while the debate was underway on the House floor, Members of the House of Representatives were taken into the evidence room and shown evidence that was not in this record, that had not been included in the discussion in the House Judiciary Committee, that had never been shown to counsel for the President, that was not in the referral and became a factor in the decisionmaking at least of some Members of the House—unfairly so, I think.

And finally, we were disappointed that the Members of the House of Representatives were denied the right and the opportunity to vote for censure. They were promised the right to vote their conscience. They were told they could vote their conscience. And if they had been given that right to vote their conscience, we might not be here today. We might have had the resolution of censure and this thing might have been resolved, and that was the greatest disappointment of all.

Thank you.

The CHIEF JUSTICE. This is a question from Senators BENNETT, BROWNBACK, CAMPBELL, HAGEL, ROTH, SPECTER and MCCONNELL to the House managers:

> Would each of the managers who have been prosecutors prior to being elected to the House of Representatives please state briefly whether he believes he would have sought an indictment and obtained a conviction of an individual who had engaged in the conduct of which the President is accused?

Mr. Manager BRYANT. Mr. Chief Justice, I know there are several, probably not only at our table, but all across this Senate, who have had some experience somewhere in prosecution of cases. I would just briefly say that—and I think it has probably been said very well today more eloquently than I will say it, not only from some of the people on our side, but even some of the people on the President's side have talked about this same concept of justice and the rule of law—it is so important in our system of justice that the American people have confidence in that.

And one of the ways that I found in my experience that confidence sometimes suffered were phone calls that occasionally you would receive where there had been an allegation that someone in an elected office or some public official in particular had, allegedly again, committed a crime or perhaps been charged with a crime

with allegations of coverup because of who that person was—there was not equal justice out there, people were being treated differently and specially. And that happens, that comes with our territory. We are very visible people. Certainly the President of the United States is the most visible of us.

As I said in my opening remarks, he is a role model for many people. And certainly when these kinds of allegations come up against the President, people raise these kinds of thoughts and complaints.

As a prosecutor, I would find this type of charge particularly of concern not only because of the perjury, which is so important because, as I said earlier, too, truth underpins our whole system, but I find it equally compelling as a prosecutor that a person of this visibility, of this responsibility not only commits a crime himself, but he brings someone else into that. He ensnares another person, actually other people into this, the coverup, the obstruction part—Monica Lewinsky, Betty Currie, Vernon Jordan, all the White House people that we have talked about. He brings other people into this and causes other people to commit crimes. I would view that even more seriously because of the fact that he made other people commit types of crimes. And because of that, I think as a prosecutor, were this another person, a John Doe of some visibility, a local district attorney, a local mayor or someone like that, there would be no doubt that the allegations would have to go to court.

And I might add in line with this that we have heard of this selecting the President out of this process by saying, well, we should not consider him like we would a Federal judge or like a general that we are talking about maybe promoting to head the Joint Chiefs of Staff or a captain for promotion to major or really anyone else here. It almost seems that—yes, he is different, but it almost seems that we want to treat him like a king because he is the only person we have got here, and because he is the only one, we can't look at him like a thousand judges or 200 generals or other public officials.

I think that is a fallacious argument. If the facts are there, no matter if this man is the President, to me that is what the Constitution is about. I think they set up this process to avoid a king and a kingdom.

I will yield time to Mr. MCCOLLUM.

Mr. Manager MCCOLLUM. I will be much briefer in answering that question, Mr. Chief Justice.

I served as a military judge advocate for 4 years on active duty, 20 more years in the Reserves. I was a prosecutor, defense attorney and military judge. I think this is a very compelling case on the evidence. I would never hesitate to take this to trial if I were prosecuting the crimes of perjury, obstruction of justice, or any of the military offenses that might be included in here. But just on the criminal charges which are in the UCMJ, I would certainly do so if given the opportunity for all the reasons and then some that Mr. BRYANT gave.

Mr. Manager BARR. Mr. Chief Justice, to me this is not a hypothetical question in any sense of the word. As a United States attorney under two Presidents, I had the opportunity not only to contemplate bringing such cases based on the evidence and the law

but actually having the responsibility of carrying those cases out and prosecuting them, including a case that probably cost me a primary election in the Republican Party for prosecuting a Member of Congress for precisely the activity which brings us here today; that is, perjury, misleading a grand jury.

So the answer to the question, Mr. Majority Leader, is not only yes but absolutely yes.

The CHIEF JUSTICE. Mr. HUTCHINSON.

Mr. Manager HUTCHINSON. I know we have run out of time. The facts and law support it, and the answer is yes. And may I add that Mr. ROGAN who has certainly prosecuted, Mr. LINDSEY GRAHAM, and Mr. GEKAS, all would—if you would like to join in that. Otherwise, we all would affirm that the answer is yes.

The CHIEF JUSTICE. This is a question to the President's counsel from Senators BOXER and JOHNSON.

The managers repeatedly assert that if the Senate acquits President Clinton, the Senate will be making the statement that the President of the United States should be held above the law. If, as the managers concede, President Clinton may be held accountable in court for the charges alleged in the House articles regardless of the outcome of the Senate trial, how could a Senate vote to acquit the President be characterized as a vote to place him above the law?

Mr. Counsel RUFF. I suppose the one quote that has been heard most often throughout these proceedings in the House and in this body is Theodore Roosevelt's, and I won't repeat it except to go to the heart of this question. The fact that we are having this trial in this Chamber, the fact that we had an impeachment proceeding in the House, is itself part of our rule of law. The President is immersed in the application of the rule of law at this very moment. And the rule of law, as I think my colleague, Ms. Mills, said, is neither a sword nor a shield, depending on your perspective. We are all subject to it and we live with its outcome, if it is fair and is consistent with the system of justice that we have developed in the last 210 years.

And, so, the verdict here, if it is "not guilty" as I trust it will be, or if this trial is ended appropriately through some other legal motion or mechanism, as long as it is done within the rule of law, will have met all of our obligations. And most importantly, it will have ensured that the President is treated neither above nor below.

But certainly the one issue that is raised in this question is important to focus on, because this is not a situation in which the President walks away scot-free no matter what happens, not to mention the personal pain and the pain that has been suffered in going through this process. The President has said, and I have said on his behalf, that he will not use his powers, or ask anyone else to use their powers, to protect him against the application of the rule of law. Moreover, just in case it has slipped anyone's mind—and it has occasionally been misstated in other forums—the statute that has allowed the independent counsel to pursue the President for the last 4-plus years specifically provides that he retains jurisdiction over the President for a year after the President has left office.

So there can be no argument that, oh, this will just fall into the cracks, or this will disappear into the ether somewhere. The President will be at risk. We trust that reasonable judgments will be

made and a determination will be reached that it is not appropriate to pursue him. But that, too, will be pursued under the rule of law to which he is subject.

The CHIEF JUSTICE. This is a question from Senators CAMPBELL, HAGEL and SPECTER to the House managers:

> White House counsel have several times asserted that the grand jury perjury charge is just a "he says, she says" case and that we cannot consider corroborating witnesses you cite. What is it about the President's grand jury testimony that convinces you he should be removed from office?

Mr. Manager MCCOLLUM. Mr. Chief Justice, that question goes to the heart of what we are here about today. We have had a great deal of discussion about a lot of peripheral questions and issues, but the fact of the matter is, the simplest portion of this deals with grand jury perjury, and I assume the question principally is directed to the first of four points under the grand jury perjury article, because, for example, the second point with respect to the President having the goal or the intent of being truthful—which he said he did in the grand jury in the Jones deposition—there isn't a "he says, she says" question.

That is just very simple. The President lied multiple times in that civil deposition, and if he said in the grand jury to the grand jurors, "My goal was to be truthful," it is pretty self-evident that that was a lie and he perjured himself. So that is not a "he says, she says."

But the question that the counsel over here has tried to bring up several times, saying the part with respect particularly to Monica Lewinsky saying that the President touched her in certain parts of her body which would have been covered by the Jones definition of sexual relations, and the President who said explicitly in his grand jury testimony, "I didn't touch those parts," and, "Yes, I agree that would have been and is part of the definition of sexual relations in the Jones case"—that is, whether you believe her or him, and they say that is a "he says, she says," and it is not.

But even if it were, you could listen to it and accept it. I think there is some confusion about the law. The law of grand jury perjury does not require two witnesses. Nor does it require the corroborating testimony of anybody else. It does not. That is why, in 1970, it was changed, and most prosecutions today for perjury, including people who are in Federal prison today for perjury in civil cases for lying about matters related to sex—and there are several, a couple of whom testified before us in the Judiciary Committee during our process and hearings—are based upon that 1970 law that does not require any corroboration.

In this case, you have Monica Lewinsky, who is a very credible witness by other reasons, so that you don't even have to get to those corroborating witnesses on those points. No. 1, she was under immunity under the threat of prosecution when she testified that way. No. 2, she has consistent statements throughout, many times over. She didn't say she had sexual intercourse with him. She could have made that up, but she didn't. Everything she says is believable about that portion of it. And third, and not last in all of this, is that she did make very contemporaneous statements to at least six other people who were her friends and counselors, describing in

detail exactly the same thing she testified to under oath before the grand jury in this respect.

Now they say, the counselors here, you can't consider that under the Federal Rules of Evidence because that is, presumably, hearsay. Well, there are at least three exceptions to that hearsay rule which could be brought out in a courtroom. They have gone about trying to carefully say we have never said that Monica Lewinsky lied.

I remember, I think it was Mr. Kendall or maybe it was Mr. Craig up there a little earlier, saying when asked that question, "Did she lie in this instance or in any other?" and they say it is just a different version of the truth. If she is saying it as explicitly as she is about this nine times or four times or whatever, and the President is saying I never did that, I don't see how they can fudge around, challenging her truthfulness and credibility.

That is what they have been doing. And in any courtroom I have ever been in, once that has occurred you can certainly bring in her prior consistent statements, and you don't even have to go with the rules of evidence on this. You are not bound by those rules of evidence. And common sense says she had no motive to be lying to her friends in those numerous telephone conversations or her meetings with her counselors when she described in detail these things the President says he didn't do, because all of those statements occurred, all of those discussions occurred before she ever was knowingly on a witness list or likely to have to testify in any other way.

She is very credible. Those prior consistent statements are very believable, and I submit to you they would be admissible in a court in the kind of contest that would be involved in a situation like this. It goes to the very heart of what we are here about—grand jury perjury, the simplest, clearest one. The President lied. Monica Lewinsky told the truth about it. And it is profound and it is important and it is critical to this case. And that is the principal one of the perjuries that we have been drawing your attention to because it is so clear. Thank you.

The CHIEF JUSTICE. This is a question from Senator DORGAN to counsel for the President:

> How can the House claim that its function is accusatory only, when the articles it voted call for the President's removal?

Mr. Counsel RUFF. This, of course, takes us back to the very heart of the argument that raged for a small time here yesterday and on previous days, the notion that the House of Representatives viewed itself during the month of December as merely—I won't even say that it rose in their mind to the level of an accusatory body that we would think of when we think of the grand jury, but to a body whose job it was, as one of the managers said at one point, simply to find probable cause to believe that the President had committed these acts.

Perhaps there has been some extraordinary transposition from the mood and the tenor of the comments made during those days when the Judiciary Committee was doing its work to the days when these managers have appeared in the well of the Senate, something that has transformed the mere probable cause screening finding that they allegedly viewed as the role of the House and the Judiciary Committee into the certainty that you hear today.

It is a good question, as to how, then, given the role they saw for themselves, they could go so far, not only to seek the removal of the President but, indeed, to add in all their prosecutorial vigor something that has never been sought before, a bar against holding any future office, at the level of certainty that they must have achieved given the standard that they held themselves to. What happened between December 19 and today that allows these managers to come before you not saying, "Well, we were certain then and we're more certain now," or "We only found probable cause back in 1998, but in 1999 we are sufficiently certain that we ought to shut down the public will as expressed in the elections of 1996."

I haven't yet found an answer to that question.

The CHIEF JUSTICE. This question is from Senators BOND, BROWNBACK, CAMPBELL, HAGEL, LUGAR, HUTCHISON of Texas, ROTH and STEVENS. It is directed to the House managers:

> After everything you have heard over the last several weeks from the President's counsel, do you still believe that the facts support the charges of obstruction of justice alleged in the articles of impeachment? Specifically, what allegations of improper conduct has the President's counsel failed to undermine?

The question is also from Senators SPECTER and MCCONNELL.

Mr. Manager HUTCHINSON. Thank you, Mr. Chief Justice. First of all, why is obstruction of justice important to begin with? I think back on an opportunity I had at a hearing once to question a member of the Colombian drug cartel. I asked him: "What is the greatest weapon that law enforcement has that you fear?"

His answer was very quickly, "Extradition."

I said, "Explain. Why is extradition feared?"

He said, "Because in Colombia, you can fix the system, but in America you can't."

That is why I think the obstruction of justice charge is so important to the administration of justice. Money, position, power does not corrupt, should not corrupt the administration of justice.

The question is, Where has the President attacked, counselors attacked credibly the allegations of obstruction? The first one is that the President personally encouraged a witness, Monica Lewinsky, to lie. This is on December 17 at 2 a.m. in the morning when the President calls Monica to tell her that she is a witness on the list—2 a.m. in the morning. At that time, of course, she is nervous, she is a witness and asked, "Well, what am I going to say?" And the President offers, according to Monica Lewinsky, you can always say you came to see Betty or you came to deliver papers.

The President's counselor attacked this by saying, "Well, remember what Monica said, 'I was never told to lie.'" I refer you to a Tenth Circuit case, United States v. Tranakos, 1990. The law is that the request to lie need not be a direct statement. As the court held:

> The statute prohibits elliptical suggestions as much as it does direct commands.

That is common sense. That is logic. That is what a jury applies—common sense. And here, of course, in this case, Monica Lewinsky testified that she was told, in essence, to lie. The President didn't say, "Monica, I need you to go in and lie for me." He told her the cover story in a legal context that she could use that

would cover for him that, in essence, would be a lie. We all know that is what it is.

Of course, the President says—well, he denies that. Of course, he said, I never told her to use the cover stories in a legal context, directly in conflict, but clearly the President's counselors have not attacked that obstruction of justice.

The second one is the jobs and the false affidavit. They say there is absolutely no connection in these two, none whatsoever. Of course, I pointed out the testimony of Vernon Jordan who testified it doesn't take an Einstein to know that whenever he found out she was a witness, she was under subpoena, that the subpoena changed the circumstances. That is the testimony of Vernon Jordan. They say there is no connection. Vernon Jordan, the President's friend, says the circumstances change whenever you are talking about getting a job with somebody who is also under subpoena in a case that is very important to the President of the United States.

Of course, Vernon Jordan also indicated the President's personal involvement when he testified before the grand jury in June. He said he was interested in this matter: "He"—referring to the President—"was the source of it coming to my attention in the first place."

He further testified: "The President asked me to get Monica Lewinsky a job."

The President was personally involved in the obtaining of a job. He was personally concerned about the false affidavit, and Vernon Jordan acknowledges that when those are combined, the circumstances are different.

The third area of obstruction is tampering with the witness, Betty Currie, on January 18 and January 20 when the questions were posed after the deposition. The President's counselor challenged this and said, well, she wasn't a witness. Even the Jones lawyers never had any clue that she was going to be a witness in this case. The President couldn't know that she was going to be a witness.

They hoped that we would never find the subpoena, because Mr. Ruff made that statement early on, which he very professionally expressed regret that he made that misrepresentation, but we found the subpoena. We found the subpoena that was actually issued a few days after the deposition for Betty Currie. She was a witness; she was not just a prospective witness. She was there, she had to be ready to go and the President knew this and the Jones lawyer knew it. So that stands. The pillar of obstruction stands.

The false statements to the grand jury—that has been covered. There have never been any holes that have been poked into that, but it was to continue the coverup of the false statements that were made in the civil rights case.

Another area of obstruction was December 28 when the gifts were retrieved, and this has been challenged. I will admit, as I always have, that there is a dispute in the testimony. But I believe the case is made through the circumstances, the motivation, the testimony of Monica Lewinsky as to what Betty Currie said when she called and the corroborating evidence. I don't believe they have poked a hole in that. I believe it stands. We would like to hear the

witnesses to make you feel more comfortable in resolving that conflict and determine the credibility of those witnesses.

But the gifts that were subpoenaed were evidence in a trial; they were needed in a civil rights case. The President knew they were under subpoena; he had the most to gain, and they were retrieved. And I believe the testimony indicates that it was based upon the actions of Betty Currie that would have been directed by the President.

There are other areas of obstruction, including the President allowing his attorney, Robert Bennett, to make false representations to the Federal district judge in the deposition. The President's defense is that there is no proof whatsoever that he was paying any attention. We offered the videotape that shows he is believed to be looking at the attorney, but we would offer a witness in that regard to show that he was attentive. That is simply something that can be substantiated.

We believe that you can evaluate that, that he was paying attention, but that is an element of obstruction because he was allowing his attorney to make a false representation to the court that was totally untrue, that would aid in the coverup and that was presented.

The CHIEF JUSTICE. Mr. HUTCHINSON, I think you have answered the question.

Mr. Manager HUTCHINSON. I thank the Chief Justice.

The CHIEF JUSTICE. This is a question from Senator LEVIN to counsel for the White House:

> In their brief to the Senate, the House managers said that there was "no urgency" to help Ms. Lewinsky until December 11, 1997, and that on that day "sudden interest was inspired" by a court order, which the House managers had represented was issued in the morning of December 11, before the Vernon Jordan/Monica Lewinsky meeting that afternoon.
>
> It took some doing yesterday to get the House managers to finally acknowledge that the court order was not issued in the morning, but in the afternoon of December 11. Why were the House managers so reluctant to make that acknowledgment?

Mr. Counsel KENDALL. Mr. Chief Justice, well, I think they were reluctant to make the acknowledgement because they were in cement due to their trial brief, which at page 20, as the question indicates, said, as to this particular time period after the December 6 meeting, "There was obviously"—there was obviously—"still no urgency to help Ms. Lewinsky." They thought that they had a chronology that was consistent with the inference of causation. But when you look at the true time of the events, that dissolves.

Now, Mr. Manager HUTCHINSON used a word repeatedly, a phrase I would like to call your attention to, as he was summarizing the evidence. He used the phrase: "In essence." Now, that is another phrase that is kind of a weasel word. When you hear that, it means that the evidence isn't really quite there, but if you look at the big picture maybe you can see what is there "in essence." It doesn't work here. It doesn't work because of the evidence.

Just a week ago, Mr. Manager HUTCHINSON, on this obstruction of justice question, was asked very clearly: "On the case that you have against the President on obstruction of justice, not the perjury, would you be confident of a conviction in a criminal court?" And he said, "No, I would not."

Now, I am not going to walk through each and every element that he identified. I think we have repeatedly dealt with them. And I am not going to step on your patience to do that again each time.

I would like to make two points. That is, in terms of encouraging Ms. Lewinsky to lie, were these cover stories an attempt to encourage her to lie? As I tried to indicate, there is testimony in the record that at a certain time in the relationship these cover stories were discussed. There is not any evidence, however, from Ms. Lewinsky, the President, or anyone else, that these were discussed in connection with the testimony, in connection with the affidavit. You remember Ms. Lewinsky, when asked if she could exclude that possibility, said, "I pretty much can."

Now, the testimony that Mr. HUTCHINSON mentioned with Mr. Jordan on December 19, you remember he quoted Mr. Jordan. He said the discovery of the subpoena at that point changed the circumstances. Well, it did, but just in the opposite way that Mr. Manager HUTCHINSON would have you infer, because when Mr. Jordan discovered, on December 19, that Ms. Lewinsky had a subpoena, was going to testify in the Jones case as a witness, unless she could get it quashed, he went to her and went to the President to seek assurance that the job assistance he was engaging in could not at any time be said to be improper because of the presence of an improper relationship. Both parties assured him there was no such relationship. This observation by Mr. Jordan cuts just the opposite way.

Thank you.

Mr. LOTT addressed the Chair.

The CHIEF JUSTICE. The Chair recognizes the majority leader.

ORDER OF PROCEDURE

Mr. LOTT. Mr. Chief Justice, I do have another question I will send to the desk momentarily, but I would like the Senators to know that we have had some 104 or 105 questions now that have been asked. I believe that is correct—104. Senator DASCHLE and I conferred. We want to thank the Senators for their participation and their questions. We do want to make it clear we are not seeking questions.

[Laughter.]

So don't feel like you need to help us by sending them down. But under your rights as Senators, under the Senate Resolution 16 and the rules we are proceeding under, every and each Senator is entitled to submit a question if he or she feels it is important, but I hope that it will be one that you think really is essential that has not been touched on somewhere already in the answers to the questions and also would hope—and that the RECORD be made clear—that we, in a bipartisan way, have tried very hard to make sure that this proceeding here and the question period, and all we have done, has been fair both to the President's counsel and the House managers. And we will continue to work in that vein.

With that observation, and if we do need to continue going forward with questions, we would have to give some consideration to taking a break and going longer, although I had indicated I hoped we could quit at 4. Maybe after this question and, if necessary, one

or two more, we could end for the day and then get together and see if we need more time on Monday for additional questions.

I send the next question to the desk.

The CHIEF JUSTICE. This is a question from Senators COCHRAN, ROTH, CAMPBELL and FRIST to the House managers:

> The President's counsel has suggested that the Senate has considered a "good behavior" standard in impeachment cases involving Federal judges. The removal of judges seems to have been based by the Senate on the impeachment power whose standard for removal is the same for both Federal judges and executive branch officials. Is the counsel for the President asking us to use a different test for removal of this President than we did in the case of Judge Walter Nixon? Please explain.

Mr. Manager CANADY. Mr. Chief Justice, Members of the Senate, I appreciate the opportunity to answer this question. It is an important question. It is true that counsel for the President are asking that you use a different standard in this case than the standard you have already established, not in just one case but, in fact, in a series of cases involving Federal judges who were before the Senate in the 1980s. There was a succession of three cases in the Senate, all dealing with the question of whether a Federal judge who had lied under oath should be removed from office because the Federal judge had lied under oath. In all three cases, the Senate decided that the Federal judge should be convicted and removed.

The President's counsel have the burden of establishing that those recent and very clear precedents of the Senate should not apply to this case where the President is charged with lying under oath, and they attempt to do that in a number of ways. But I suggest, as you evaluate their attempt to distinguish away those precedents, that you look first and last to the Constitution.

The Constitution should be your guide. And I suggest to you that there is nothing in the Constitution which establishes a different standard for the President—for any reason. There is not something in the Constitution that says he is subject to a different standard because he is elected. That argument had been advanced. If you look in the Constitution, you simply will not find that. And to argue for a different standard because the President is elected, I submit to you, is to impose something on the Constitution that is entirely alien to the document itself.

The Constitution contains a single standard for the application of the impeachment and removal power. I have read it before, but I will read it again. Article II, section 4 provides:

> The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

Now, reference was made in the question, and reference has been made by the President's counsel, to the good behavior clause. That is found in article III, section 1. That clause does not alter the standard I have just read to you, however. Rather than creating an altered standard for removal of Federal judges, the good behavior clause merely establishes that the term of office for judicial officers is life.

I wouldn't ask you to take my word for this. Let me refer again to the 1974 report by the staff of the Nixon impeachment inquiry. There they asked the question: "Does Article III, Section 1 of the

Constitution, which states that judges 'shall hold their Offices during good Behaviour,' limit the relevance of the . . . impeachments of judges with respect to presidential impeachment standards as has been argued by some?" That is essentially the question before the Senate now. Their answer was: "It does not." It does not. ". . . the only impeachment provision"—they go on to say—"discussed in the [Constitutional] Convention and [indeed] . . . in the Constitution is Article II, Section 4, which by its expressed terms, applies to all civil officers, including judges. . . ."

I would go on to note, it is very interesting that at the Constitutional Convention, on August 27, 1787, an attempt was made to amend the good behavior clause by adding a provision for the removal of judges by the executive on the application by the Senate and House of Representatives. Now, this proposal, which was offered by John Dickinson, was based on the English parliamentary practice of removal of judges by address, a practice also utilized by several American States. And under this process, judges could be removed for misconduct, falling short of the level of seriousness that would justify impeachment.

Now, the proposal offered by Dickinson was overwhelmingly rejected. It was overwhelmingly rejected by the Convention. Thus, the sole provision for removal and the sole standard for removal is that which I have referred to in article II, section 4.

Now, mention has been made, and I want to respond to this, because mention has been made of efforts of Congress to establish a separate procedure for the removal of Federal judges, a procedure separate and apart from the impeachment and removal process.

Specific mention has also been made of testimony given in 1970 by the Chief Justice, who was then an assistant attorney general, regarding a proposal to establish a separate removal procedure. The testimony given by the Chief Justice at that time related to the constitutionality of the provisions of the bill relating to the removal of judges by methods other than impeachment.

Now, my own view, quite candidly, is that such a removal procedure raises serious constitutional questions—serious questions about maintaining the independence of the judiciary. Putting that question aside, and regardless of the standards that might be applied in such a separate removal procedure, it is clear that the single constitutional standard for impeachment and removal would remain the same. That is what is in the Constitution. That can't be changed by any statute or anything set up apart from the constitutional procedures.

One thing I want to say as I move toward concluding my response: It should be recognized that some specific acts might be a breach of duty if done by a judge but not a breach of duty if done by the President of the United States. That is an important distinction that we all should bear in mind. For example, it would be serious misconduct for a judge to engage in repeated ex parte meetings with parties who have an interest in a matter pending before that judge; but it is typical for the President to engage in such ex parte meetings with persons who have an interest in matters on which he will decide. For a judge, such conduct constitutes a breach of duty; for the President, it does not constitute a breach of duty.

The CHIEF JUSTICE. Mr. CANADY, I think you have answered the question.

This question from Senator HARKIN is to counsel for the President:

> There are three contradictions in the record: One, who touched whom on what parts of the body; two, when the relationship began; three, who called whom to get the gifts, Ms. Currie or Ms. Lewinsky.
>
> How will these witnesses clear up the contradiction?

Mr. Counsel CRAIG. Mr. Chief Justice, Senator HARKIN, it is difficult for me to explain how, after you have gotten 19 interviews, 2 grand jury appearances, and 1 deposition to cover that precise territory, any further kind of inquiry along those lines would be of any help.

The House managers have argued that they need to call witnesses for the purposes of resolving inconsistencies, conflicts, and discrepancies in testimony. And they have, in fact, identified Monica Lewinsky in particular as having given testimony in conflict with the testimony of the President, with Betty Currie and Vernon Jordan.

But it would be well to remember that the lawyers for the Office of Independent Counsel certainly are not seeking to elicit testimony that is favorable to the President, that those lawyers have already done a great deal of this precise kind of inquiry at some great length. Those lawyers—no friends of the President—have already explored inconsistencies, they have already tested memory, they have already laboriously and at great length subjected these witnesses to searching scrutiny, and their work is available for all to see in the record of this case before the Senate today.

Let me be very specific and very concrete. Monica Lewinsky was interviewed by the lawyers for the Office of Independent Counsel or testified before the grand jury on 20 different occasions after Betty Currie and Vernon Jordan had given their testimony before the grand jury. And contrary to the assertions of the House managers, Monica Lewinsky was interviewed six times and testified twice—one time before the grand jury and once in a sworn deposition after the President had given his testimony before the grand jury on August 17.

On August 19, she was interviewed by the FBI and by lawyers for the special counsel. She testified before the grand jury—Ms. Lewinsky testified before the grand jury on August 20. She was interviewed by lawyers and FBI agents for the independent counsel on August 24. She was interviewed on August 26. She appeared for a deposition held in the conference room of the Office of Independent Counsel on August 26. She was interviewed pursuant to her immunity agreement with independent counsel and FBI agents on September 5. She was also interviewed—excuse me; that was September 3. She appeared and listened to tapes with the FBI present on many occasions during the period September 3 through September 6. She appeared and was interviewed by special counsel, independent counsel, on September 7 and September 5 and September 6.

So it raises a question as to whether or not the desire to interview Monica Lewinsky stems from a desire to resolve conflicts that

she has with other people, because certainly these occasions gave the lawyers for the independent counsel an opportunity to do so.

I would simply submit that within the bounds of ethical behavior, I am sure, because I respect the professionalism of the House managers, but I would suspect that one of the reasons they want to inquire of Ms. Lewinsky is not to resolve discrepancies and disputes, it is to perhaps challenge her testimony when it is helpful to the President and perhaps bolster her testimony when it is not helpful to the President. The House managers are not neutral investigators, neutral interrogators.

It raises questions about what the managers' true purpose is in calling Vernon Jordan and Betty Currie forward as witnesses, what they want to inquire about if they conduct an interview of them. I suggest that this is also a bit of a fishing expedition, looking for evidence that will be damaging to the President.

We are not afraid of witnesses, but we do want fairness, and we don't think it is fair in this process. If you are going to have a real trial, then we want to have a real defense, and to have a real defense requires real discovery and real opportunity to have access to documents and witnesses and evidence that has been in the custody and the control of the House of Representatives, that has never been made available to us, that is in the custody and control of the Office of Independent Counsel, that has not been made available to us.

I suggest, as we have seen from the statements made by the managers to this body yesterday and today about Vernon Jordan suggesting—actually suggesting that he did not tell the truth when he testified numerous times before the grand jury, which is an outrageous suggestion, and suggesting, which happened today—implying that he destroyed evidence, which not even the independent counsel had suggested, they seek to do nothing more than to attack, attack, attack the best friend of the President of the United States, and his personal secretary.

That is the reason they want to talk to these people. I think it is an improper reason. It is wanting to win too much. I don't think the U.S. Senate should be part of it.

The CHIEF JUSTICE. This question is from Senators HAGEL, ABRAHAM, and HATCH to the House managers:

> White House counsel has indicated their opposition to calling witnesses, asserting that calling witnesses would not shed light on the facts and would unnecessarily prolong the proceedings. But it is the responsibility of the Senate to find the truth. And if any Senators reasonably believe that hearing witnesses would assist in finding the truth, why shouldn't they be called?

Mr. Manager MCCOLLUM. Thank you, Mr. Chief Justice.

"Methinks thou doth protest too much." I think that is what White House counsel has been doing. I don't know why, but they, frankly, don't want witnesses. They don't want what you normally have in a trial. We can paint this with any kinds of colors you want to have, but a trial without witnesses, when it involves a criminal accusation, a criminal matter, is not a true trial; it really isn't. It is not what I think of, and I guarantee it is not what any of my friends sitting over here who have been counsel, prosecutors and defense lawyers, think of. It is remotely conceivable, but certainly not where you have had the inferences and the conclusions that we

draw logically from the entire sequence of events that are painted from the very day when the President got word of Monica Lewinsky being on the witness list, and all the way through his testimony in the Jones case, all the way through the grand jury testimony, when they challenge every inference that you should logically draw from the record, and then suggest that, oh, but we should not have anybody in here; so you who are going to judge ultimately whether our representations are persuasive or not about those inferences, whether you should be able to judge—and I think you should—what the witnesses actually are saying.

I will give you one illustration. I don't know how many times—two or three times—I put up here on the board, or I have said to you—and I know a couple of my colleagues said to you—that during the discussion with regard to the affidavit that Monica Lewinsky had in front of the grand jury, she explicitly said: No, the President didn't tell me to lie, but he didn't discourage me either. He didn't encourage me or discourage me.

You need to have her say that to you. They have even been whacking away at that, confusing everything they can, talking about the job searches at the same time they are talking about the affidavit, what she said here, there, or anywhere else. Witnesses are a logical thing. There are a lot of conflicts that are here.

When we get to the point—which we presume we will get that opportunity to do—to argue our case on why we should have witnesses, maybe Monday or perhaps Tuesday—I think that even though you have a motion to dismiss, we will get that chance—we will lay out a lot of these things. There are a lot of them out there. But the point is, overall, you need to have the witnesses to judge what any trier of fact judges about any one of these.

I would be happy to yield to Mr. GRAHAM or Mr. ROGAN if they wish—neither one. That is fair enough.

Mr. LOTT addressed the Chair.

The CHIEF JUSTICE. The majority leader is recognized.

Mr. LOTT. Mr. Chief Justice, it now approaches the hour that we had indicated we would conclude our work on Saturday. There may still be some questions that Senators would like to have offered. I have talked to Senator DASCHLE.

One suggestion made is that maybe on Monday we would ask that questions could be submitted for the RECORD in writing. I think that is a common practice. We don't want to cut it off. At this point, I would not be prepared to do that. But I would like to suggest that we go ahead and conclude our business today, and if there is a need by a Senator on either side to have another question, or two or three, we will certainly consult with each other and see how we can handle that, perhaps on Monday, and even see if it would be appropriate to prepare a motion with regard to being able to submit questions for the RECORD, which would be answered. We would not want to abuse that and cause that to be a protracted process.

In view of the time spent here—in fact, we have had around 106 questions, and we are about 10 hours into this now—I think we should conclude for this Saturday. We will resume at 1 p.m. on Monday and continue in accordance with the provisions of S. Res.

16. I will update all Members as to the specific schedule when it becomes clear.

UNANIMOUS CONSENT AGREEMENT

Mr. LOTT. I ask unanimous consent that in the RECORD following today's proceedings there appear a period of morning business to accommodate bills and statements that have been submitted during the day by Senators. I thank my colleagues for their attentiveness during the proceedings.

The CHIEF JUSTICE. Without objection, it is so ordered.

ADJOURNMENT UNTIL 1 P.M. MONDAY, JANUARY 25, 1999

Mr. LOTT. Mr. Chief Justice, I ask that the Senate stand in adjournment under the previous order.

Mr. HARKIN. I object.

Mr. LOTT. Mr. Chief Justice, I move that the Senate stand in adjournment under the previous order.

Mr. HARKIN. Mr. Chief Justice, I seek recognition.

The CHIEF JUSTICE. The question is on the motion to adjourn.

The motion was agreed to and, at 3:55 p.m., the Senate, sitting as a Court of Impeachment adjourned until Monday, January 25, 1999, at 1 p.m.

TOM HARKIN
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United States Senate
WASHINGTON, DC 20510-1502

COMMITTEES:
AGRICULTURE
APPROPRIATIONS
SMALL BUSINESS
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January 23, 1999

The Honorable William Rehnquist
Chief Justice of the United States Supreme Court
Presiding Officer of the Senate Impeachment Court
United States Senate
Washington, DC 20510

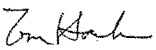
Dear Mr. Chief Justice:

I am writing you on a matter of significant Constitutional consequence. I ask you, as presiding officer of this Court of Impeachment, to issue an order in protection of this Court's "sole power to try impeachment" to prohibit any questioning by or on behalf of the House Managers of any witness pursuant to the January 23, 1999 order of the District Court Judge Norma Holloway Johnson. Such questioning would violate the Senate's sole authority under Article I, Section 3 of the Constitution to try impeachments and would be a clear violation of the procedures adopted unanimously by this Senate for the conduct of this trial. It is up to the Senate, not the Independent Counsel or any Article III District Judge, to determine the procedures under which the House Managers or White House Counsel may interview witnesses.

In support of my request, I cite the Supreme Court's opinion in U.S. v. Nixon, wherein the Supreme Court held, and I quote: "The first sentence in [Article I, Section 3] is a grant of authority to the Senate, and the word 'sole' indicates that this authority is reposed in the Senate and nowhere else.....Judicial involvement in impeachment proceedings, even if only for purposes of judicial review, is counterintuitive because it would eviscerate the 'important constitutional check' placed on the Judiciary by the Framers."

As the Independent Counsel may be interviewing Ms. Lewinsky as early as tomorrow morning, I ask that you give prompt consideration of this matter. Thank you for your consideration of my request.

Sincerely,



Tom Harkin
United States Senator

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

January 25, 1999

The Honorable Tom Harkin
United States Senate
Washington, D. C. 20510-1502

Dear Senator Harkin:

Your letter to me of January 23 requests that I "issue an order . . . to prohibit any questioning by or on behalf of the House Managers of any witness pursuant to the . . . order of the District Court Judge Norma Holloway Johnson." Giving the matter such consideration as I have been able to since receiving your letter late Saturday afternoon, I have decided that I cannot accede to your request.

As you know, Rule V of the Senate Rules for trial of impeachments provides:

> "The Presiding Officer shall have power to make and issue, by himself or by the Secretary of the Senate, all orders, mandates, writs, and precepts authorized by these rules or by the Senate, and to make and enforce such other regulations and orders in the premises as the Senate may authorize or provide."

Rule VII provides:

> "The Presiding Officer of the Senate shall direct all necessary preparations in the Senate Chamber, and the Presiding Officer on the trial shall direct all the forms of proceedings while the Senate is sitting for the purpose of trying an impeachment, and all forms during the trial not otherwise specially provided for. ***"

I am by no means certain that I might issue the sort of order you request when the Senate is out of session. But assuming that I have such authority, I would want to use it only in a

case in which its exercise were clearly warranted. The situation you pose, in my view, does not meet that criterion.

The final judge of the meaning of Senate Resolution 16 in its various provisions is, of course, the Senate itself. Without the benefit of a decision by that body, your letter requires me to interpret the meaning of the Resolution myself. Clearly the Resolution contemplates that the taking of witness depositions will occur only after a vote by the Senate to hear witnesses. No such deposition could be taken except under the authority of the Senate; a deposition is an adjunct to a court proceeding, and it is only from the court that the authority to compel the attendance of witnesses and administer oaths is derived.

But in my view it is quite debatable whether merely interviewing a witness who might later be deposed would similarly breach the provisions of Senate Resolution 16. The fact that Judge Johnson, in an order collateral to the Senate proceedings, decided to enforce an immunity agreement previously entered into by a potential witness does not seem to me to alter the situation.

Sincerely,

William H. Rehnquist

MONDAY, JANUARY 25, 1999

[From the Congressional Record]

The Senate met at 1:04 p.m. and was called to order by the Chief Justice of the United States.

TRIAL OF WILLIAM JEFFERSON CLINTON, PRESIDENT OF THE UNITED STATES

The CHIEF JUSTICE. The Senate will convene as a Court of Impeachment. The Chaplain will offer a prayer.

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Dear God, we are moved by Your accessibility to us and our accountability to You. We hear Your promise sounding in our souls, "Be not afraid, I am with you." We place our trust in Your problem-solving power, Your conflict-resolving presence, and Your anxiety-dissolving peace. So we report in to You for duty. What You desire, You inspire. What You guide, You provide.

This is Your Nation; we are here to serve You. Just as Daniel Webster said that the greatest conviction of his life was that he was accountable to You, we press on with a heightened awareness that You are the unseen Lord of this Chamber, the silent Listener to every word that is spoken, and the Judge of our deliberations and decisions.

Bless the Senators with the assurance that Your work, done with total trust in You and respect for each other, will not lack Your resources. Surpass any impasse with divinely inspired solutions. You are our Lord and Saviour. Amen.

The CHIEF JUSTICE. The Sergeant at Arms will make the proclamation.

The Sergeant at Arms, James W. Ziglar, made proclamation as follows:

Hear ye! Hear ye! Hear ye! All persons are commanded to keep silent, on pain of imprisonment, while the Senate of the United States is sitting for the trial of the articles of impeachment exhibited by the House of Representatives against William Jefferson Clinton, President of the United States.

THE JOURNAL

The CHIEF JUSTICE. If there is no objection, the Journal of proceedings of the trial is approved to date.

Pursuant to the provisions of Senate Resolution 16, there are 6 hours 33 minutes remaining during which Senators may submit questions in writing directed to either the managers, on the part of the House of Representatives, or the counsel for the President.

The majority leader is recognized.

Mr. LOTT. Thank you, Mr. Chief Justice.

ORDER OF PROCEDURE

Mr. LOTT. As is obvious by the absence of the managers and counsel, and a number of the Senators, the two parties are still meeting in conference at this time. I believe we are close to reaching an agreement which would outline today's impeachment proceedings. It will probably be an hour or so before we can complete that because we need to explain it in detail to our respective conferences, and also make sure that we reduce it to writing so we understand exactly what we are agreeing to.

I will in a moment ask that the Senate stand in recess until 2 p.m. I apologize for any inconvenience to Senators and the Chief Justice. But I think that what we are discussing in the long run would save some time and lead us to a fair procedure through the balance of the day and how we begin tomorrow.

RECESS

Therefore, I now ask unanimous consent that the Senate stand in recess until 2 p.m.

Mr. GREGG. Mr. Chief Justice, reserving the right to object——

The CHIEF JUSTICE. The Senator from New Hampshire.

Mr. GREGG. Mr. Chief Justice, I have a parliamentary inquiry that I would like to share.

The CHIEF JUSTICE. The Parliamentarian says it takes unanimous consent.

Mr. GREGG. I ask unanimous consent to——

Mr. LEAHY. Reserving the right to object, I believe that if it is going to be made, Mr. Chief Justice, if it requires unanimous consent, that it would be wise if it can be done at a time when both leaders are on the floor.

Mr. GREGG. I withdraw the unanimous consent.

There being no objection, at 1:08 p.m., the Senate recessed until 2:06 p.m.; whereupon, the Senate reassembled when called to order by the Chief Justice.

The CHIEF JUSTICE. The Chair recognizes the majority leader.

Mr. LOTT. Mr. Chief Justice, it is my understanding that the question and answer period is now completed. In a moment I will propound a unanimous consent agreement that will outline the next steps in this process.

UNANIMOUS-CONSENT AGREEMENT

Mr. LOTT. In the meantime, I would ask unanimous consent that Senators be allowed to submit statements and introduce legislation at the desk today. I further ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 1 p.m. on Tuesday to resume the articles of impeachment.

The CHIEF JUSTICE. Without objection, it is so ordered.

Ms. MIKULSKI. Reserving the right to object, I note that the Democratic leader is not in the Chamber.

May I inquire, has this been cleared?

Mr. LOTT. I just want to observe, Mr. Chief Justice, that there are still some discussions underway. You will note that Senator DASCHLE is not here, and unless there is objection to what I just

did, I am prepared to note the absence of a quorum so that we can have time for Senators to return to the Chamber.

Ms. MIKULSKI. Point of clarification for the majority leader. Did the Senator say that we would come in tomorrow at 1 p.m.?

Mr. LOTT. I did. If I might respond, Mr. Chief Justice, there had been some discussion about coming in earlier, but because of a number of conflicts, I understand, from the House managers and concerns that we would need that time to continue to have discussions, we thought we would go ahead and come in at 1. But let me add that if during the process of the day there is a decision that we need to change that to either earlier or later, we could revise that request. This is just to move the process forward, as we have announced each day we would come in at 1 except on Saturday. But if there is a need to change the time, we will certainly be prepared to consider that request.

Ms. MIKULSKI. Mr. Chief Justice, I thank the majority leader.

Mr. LOTT. Mr. Chief Justice, I suggest the absence of a quorum.

The CHIEF JUSTICE. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. LOTT. Mr. Chief Justice, I ask unanimous consent that the order for the quorum call be rescinded.

The CHIEF JUSTICE. Without objection, it is so ordered.

Mr. LOTT. Mr. Chief Justice, I had earlier asked a couple of unanimous consent requests, but the Democratic leader was not on the floor, and it was not officially objected to or officially ruled as not having been objected to. So I am going to assume that is all null and void, and we are going to start over again.

The CHIEF JUSTICE. The requests are withdrawn.

Mr. LOTT. Now, to repeat what we had earlier discussed and to make sure Members understand it, it is our understanding and our agreement that the question and answer period is now completed.

ORDER FOR SUBMISSION OF STATEMENTS AND INTRODUCTION OF LEGISLATION

Mr. LOTT. I ask unanimous consent that Senators be allowed to submit statements and introduce legislation at the desk today.

The CHIEF JUSTICE. Without objection, it is so ordered.

ORDER OF PROCEDURE

Mr. LOTT. With regard to the time that will be involved today and the time that we will come in on Tuesday, we will have further discussions on that, and we will have a consent request on that later in the day or at the close of business.

Now I have a unanimous-consent request that will allow us to have a clear understanding and an orderly procedure for the balance of the day. I have discussed this with my counterpart on the other side of the aisle, both conferences have had a chance to talk about it, and I think it is a fair way to proceed, where we would have a chance to discuss the issues that are before us and get us to a conclusion of this part of the impeachment proceedings in a logical way.

UNANIMOUS-CONSENT REQUEST

Mr. LOTT. First, Mr. Chief Justice, I ask unanimous consent that today, following the conclusion of the arguments by the managers and the counsel on the motion to dismiss—and I note that the next order of business is 2 hours equally divided, 1 hour on each side, on a motion to dismiss when and if it is filed by any Senator—it be in order for Senator HARKIN to make a motion to open all debate pursuant to his motion timely filed and that the Senate proceed immediately to the vote pursuant to the impeachment rules.

I further ask that following that vote, if defeated, it be in order to move to close the session for deliberations on the motion to dismiss, as provided under the impeachment rules, and the Senate proceed to an immediate vote.

I further ask that if the Senate votes to proceed to closed session, those deliberations must conclude by the close of business today, notwithstanding the 10-minute rule allocated under the impeachment rule.

The CHIEF JUSTICE. Is there objection?

Mr. HARKIN. I object.

Mr. FEINGOLD addressed the Chair.

The CHIEF JUSTICE. The Senator from Iowa.

Mr. HARKIN. Reserving the right to object.

Mr. LOTT. Mr. Chief Justice, does he reserve the right to object or did he object?

The CHIEF JUSTICE. The Parliamentarian tells me the Senator does not have the right to reserve the right to object.

Mr. FEINGOLD addressed the Chair.

Mr. HARKIN. I just have a modification that I would like to discuss with the leader, a brief modification of that, that would not engender an objection.

Mr. LOTT. Mr. Chief Justice, so we can proceed with this in an appropriate manner, I suggest the absence of a quorum.

The CHIEF JUSTICE. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. LOTT. Mr. Chief Justice, I ask unanimous consent that the order for the quorum call be rescinded.

The CHIEF JUSTICE. Without objection, it is so ordered.

UNANIMOUS-CONSENT AGREEMENT

Mr. LOTT. Mr. Chief Justice, I renew my request as previously outlined, with one change; that is, that it say in the first sentence "unanimous consent that following the conclusion of the arguments by the managers and the counsel today on the motion to dismiss, that it be in order for Senator HARKIN to make a motion to open that debate." Instead of "all," the word is "that" debate.

With that and no other changes, I renew that request.

Mr. HARKIN. Mr. Chief Justice, I reserve the right to object.

OK, I don't have any——

Mr. LOTT. The reservation is withdrawn, I believe.

Mr. FEINGOLD. Mr. Chief Justice, I object.

The CHIEF JUSTICE. Objection is heard.

Mr. FEINGOLD addressed the Chair.

Mr. LOTT. Mr. Chief Justice, I suggest the absence of a quorum.

The CHIEF JUSTICE. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. LOTT. Mr. Chief Justice, welcome to the operations of the U.S. Senate.

I ask unanimous consent that the order for the quorum call be rescinded.

The CHIEF JUSTICE. Without objection, it is so ordered.

Mr. LOTT. Mr. Chief Justice, was the unanimous consent agreement agreed to?

The CHIEF JUSTICE. Not yet.

Mr. LOTT. I renew my request.

Mr. FEINGOLD addressed the Chair.

The CHIEF JUSTICE. Objection is heard.

Mr. FEINGOLD. Mr. Chief Justice, I and Senator COLLINS, the junior Senator from Maine, ask unanimous consent that when the Senate considers the anticipated motion to dismiss, that it shall vote on two separate questions: First, whether to dismiss article I of the articles of impeachment; and, second, whether to dismiss article II.

Mr. GRAMM. I object.

The CHIEF JUSTICE. There is a pending request for unanimous consent by the majority leader, who has not surrendered the floor.

Mr. LOTT. Under his reservation, if the Senator would yield to me, I believe if we can get this agreed to, he can make his request and then it can be ruled on.

Mr. Chief Justice, I yield the floor if the Senator would like to proceed in that fashion.

I renew my request, again, for the unanimous consent as outlined earlier.

The CHIEF JUSTICE. Is there objection? In the absence of an objection, it is so ordered.

Mr. FEINGOLD. Mr. Chief Justice, I renew my request, along with the junior Senator from Maine—the unanimous consent request that when the Senate proceeds to vote on the anticipated motion to dismiss, that the question be divided into a separate vote on article I of the articles of impeachment, and then a separate vote on article II of the articles of impeachment.

Mr. GRAMM. I object.

The CHIEF JUSTICE. Objection is heard.

Mr. LOTT. Mr. Chief Justice, now, if I could, I will outline the result of our efforts there. I thank Senator DASCHLE and my colleagues on his side of the aisle and this side of the aisle for trying to come up with a process that is fair and that would give us an opportunity today to debate this important issue. It is never easy to get 100 Senators to agree on a method to proceed, so I think this was a good accomplishment. I thank one and all.

I understand that now Senator BYRD will offer the motion to dismiss. For the information of all Members, once that motion is offered, there will then be 2 hours for debate. The House managers will be recognized to open the debate, and following that will be the White House arguments. Then the House managers will be recognized again for closing remarks. At that point, the consent agreement would apply.

I anticipate taking our first break at the conclusion of the first 2 hours of arguments by the managers and White House counsel, unless there is an urgent need to do so earlier. Then we will go forward with this agreement, which will require a vote on the Harkin motion to open the debate, the vote on the amendment to close debate on the motion to dismiss, and then the debate which would go on, the 10-minute rule notwithstanding, until the close of business today.

I yield the floor.

Mr. BYRD addressed the Chair.

The CHIEF JUSTICE. The Chair recognizes the Senator from West Virginia.

MOTION TO DISMISS

Mr. BYRD. Mr. Chief Justice, I send a motion in writing to the desk.

The CHIEF JUSTICE. The clerk will read the motion.

The legislative clerk read as follows:

The Senator from West Virginia, Mr. BYRD, moves that the impeachment proceedings against William Jefferson Clinton, President of the United States, be, and the same are, duly dismissed.

The CHIEF JUSTICE. Pursuant to Rule XXI of the Senate Rules on Impeachment, the managers on the part of the House of Representatives and the counsel for the President each have up to 1 hour to argue the motion.

The Chair recognizes the House managers.

Mr. Manager CANADY. Mr. Chief Justice, Members of the Senate, on behalf of the House of Representatives, I rise to speak in opposition to the motion to dismiss. During the hour allotted to the managers, I will offer a few introductory comments concerning why adoption of the motion would be inconsistent with constitutional standards and harmful to the institutions of our Government. Mr. HUTCHINSON, Mr. GRAHAM, and Mr. GEKAS will present arguments concerning the facts and the law, and then Mr. HYDE will close.

At the outset, I must urge you to consider the fact that this motion to dismiss is without precedent. The Senate has never—not once in the more than 200-year history of our Constitution—dismissed a proceeding against an official who remained in office after impeachment by the House of Representatives. I humbly urge you not to depart from the Senate's well-established practice of fully considering cases of impeachment and rendering a judgment of either conviction or acquittal.

In the midst of the great differences between the President's counsel and the House managers, there actually is at least a little common ground. Both sides agree that the impeachment and removal power is designed to protect the well-being of the institutions of our Government. But there is a critical difference that divides us, as is obvious from the argument that has gone before.

The managers have argued that this power—the power of impeachment and removal—is a positive power granted by the Constitution to maintain the integrity of Government, a power to preserve, protect, and strengthen our constitutional system against the misconduct of officials that would subvert, undermine, or weaken the institutions of our Government.

The President's lawyers, on the other hand, advance a much narrower view of the role of the impeachment power in protecting our institutions. Their case rests on the argument that it is a power to be used only in response to conduct threatening devastating harm to the system of Government—at least when it is used against a President.

But I submit to you that Alexander Hamilton did not contemplate that the impeachment process would be so restricted when he spoke of it as a "method of national inquest into the conduct of public men." And James Iredell did not have such a narrow view in mind when he spoke of the accountability through impeachment of anyone who "willfully abuses his trust." Iredell did not have such a limited view when he spoke of the impeachment of a President who, as he said, "acted from some corrupt motive or other."

Under the standards urged by the President's lawyers, the misdeeds of Richard Nixon would not be the threshold for impeachment and removal. What he did was corrupt. The legal rights of citizens were treated with contempt. President Nixon showed an egregious lack of respect for the law. But all these misdeeds did not threaten the sort of ruinous harm to the system of Government that the President's lawyers argue would be required to justify conviction and removal. After all, the core charges against President Nixon related to the coverup of a third-rate burglary.

Members of the Senate, as you consider the motion to dismiss, I ask you to pause and reflect on the consequences of the standard advocated by the President's lawyers. Consider the consequences for the system of justice of allowing the President's dangerous example of lawlessness to stand. Consider the consequences for the Presidency itself.

I respectfully submit to you that the standard advocated by President Clinton's lawyers will debase and degrade the institution of the Presidency. I know that is not the intention of the President's lawyers, but it is the necessary consequence of their position.

Only 42 men have held the office of President of the United States. Some of them have been ordinary men of limited talent. A handful of our Presidents have been great men. Most have been capable men who brought special skills to the office. No matter what our individual judgments may be concerning President Clinton, it is clear that he is one of the most intellectually gifted and politically skilled men to hold the office of President.

He was raised to this great eminence—the most powerful office in the greatest Nation in the history of the world—an unparalleled opportunity, honor and privilege. And in this position of eminence and honor, and in this position of trust, what did he do? He made a series of choices that has brought us to this day. He made the choice to violate the law—and he made that choice repeatedly. He knew what he was doing. He reflected on it. Perhaps he struggled with his conscience. But when the time came to decide, he deliberately and willfully chose to violate the laws of this land. He chose to turn his back on the very law he was sworn to uphold. He chose to turn his back on his solemn oath of office. He chose to turn his back on his constitutional duty.

As you deliberate on this motion, I ask you to consider what William Jefferson Clinton has done to the integrity of the great office he holds as a trust. I ask you to consider the harm he has caused, the indignity he has brought to the institution of the Presidency.

Some have asked of us, "Where is the compassion and where is the spirit of forgiveness?" Let me say that I, for one, believe in forgiveness. Without forgiveness, what hope would there be for any of us? But forgiveness requires repentance; it requires contrition. And so I must ask, where is the repentance? Where is the contrition?

It is true that the President has expressed regret for his personal misconduct. But he has never—he has never—accepted responsibility for breaking the law. He has never taken that essential step, as the argument advanced so vigorously by his counsel makes clear. He has refused to accept responsibility for breaking the law. He has stubbornly resisted any effort to be held accountable for his violations of the law, for his violations of his constitutional oath, and his violation of his duty as President. To this day, he remains adamantly unrepentant. And, of course, under our system of justice, even sincere repentance, which is so lacking here, does not eliminate all accountability.

In the discussion thus far, the debate has brought the concept of proportionality to the fore from time to time. You have been urged to reject your own precedents—the clear precedents establishing that crimes such as lying under oath justify conviction and removal. The principle of proportionality, it has been urged, requires that the rule you have applied to Federal judges not be applied to the President of the United States.

I will be the first to concede that removing a President of the United States is, without doubt, a more momentous decision than removing one of the hundreds of Federal judges who hold office in this country. When the Chief Executive is removed, the gravity of the matter undeniably reaches a higher level. But it is also true—and it must not be forgotten—that when the President engages in a calculated and sustained course of conduct involving obstruction of justice and perjury, the gravity of the consequences for the Nation also reaches a far higher level. Such lawless conduct by the President does immeasurably more to subvert public respect for the law than does the misconduct of any Federal judge or any other Federal official.

As has been pointed out more than once, the Constitution contains a single standard for impeachment and removal of all civil officers; there is not one standard for the President and another standard for everyone else. There is nothing in the Constitution that requires you—or allows you—to set a lower standard of integrity for the President than the standard you have set for other officials who have been convicted and removed by your solemn action.

Although they can point to nothing in the Constitution, the President's lawyers assert that the President is simply different because he is elected. So let me say this. The Senate itself has established a standard of integrity for its own elected Members that President Clinton could not meet. As recently as 1995, an elected Senator resigned under imminent threat of expulsion for offenses that included acts similar to the acts of obstruction of justice committed by President Clinton.

Senator Robert Packwood was elected, yet he was on his way to certain expulsion. Listen to what the Senate Select Committee on Ethics had to say about Senator Packwood's conduct. He was guilty, the committee found, of:

> . . . withholding, altering and destroying relevant evidence . . . conduct which is expressly prohibited by 18 United States Code, section 1505. . . . Senator Packwood's illegal acts constitute a violation of his duty of trust to the Senate and an abuse of his position as a United States Senator, reflecting discredit upon the United States Senate.

The statute referred to by the committee in the Packwood case is closely analogous to the obstruction of justice statute the President has violated. Senator Packwood unlawfully sought to impede the discovery of evidence. President Clinton has done the same thing. For his violation of the law, Senator Packwood, an elected Senator, was judged worthy of expulsion from the Senate.

But the President's lawyers argue the President should be held to a lower standard of integrity than the standard you have set for yourselves as Members of the Senate. According to them, the Constitution establishes a lower standard of integrity for the President than the standard for Senators, a lower standard than the standard for Federal judges, and a lower standard than the standard for members of the Armed Forces of the United States.

Ladies and gentlemen of the Senate, I submit to you that the President's lawyers, honorable as they are, are simply wrong. They advocate an arbitrary standard that would insulate the President from the proper accountability for his misconduct under our Constitution. Our Constitution does not establish a lower standard of integrity for the President of the United States.

The Senate, I respectfully submit to you, should follow the well established precedents. The Senate should reject the motion to dismiss.

The CHIEF JUSTICE. The Chair recognizes Mr. HUTCHINSON.

Mr. Manager HUTCHINSON. Mr. Chief Justice, how much time has expired?

The CHIEF JUSTICE. Twelve minutes.

Mr. Manager HUTCHINSON. Mr. Chief Justice, ladies and gentlemen of the Senate, in my former life, when I tried cases, the defense counsel would routinely offer a motion to dismiss, and my clients would always ask me how they could argue to dismiss a case before we had a chance to put on our evidence. I would always explain that there was more than sufficient evidence to get this case to a jury and they didn't have to worry.

We all know that granting a motion to dismiss is a weapon that is rarely used in court. It is a severe remedy that cuts off an individual's right to seek justice in court. For that reason, a motion to dismiss must fail if there is any substantial evidence to support the case. In addition, as you evaluate evidence under a motion to dismiss, the facts are to be considered in a way that is most favorable to the respondent—in this case the House managers.

For example, if there is a dispute between the testimony of Ms. Lewinsky and the President in consideration of this, I would urge you to—and believe that under proper rules you should—consider that in the favor of the theory of the articles of impeachment.

It has been explained to me many times that standard courtroom rules do not apply in the U.S. Senate. But, still, granting a motion to dismiss by the Senate has the same effect—to cut short the trial and avoid the development of the facts—as it would in any State court case. In this case of impeachment, the House of Representatives found that there was substantial evidence to support these articles. And the Senate should not summarily dismiss the charges.

I might add that, despite Mr. Ruff's references, the House standard for the articles of impeachment was not simply probable cause. My colleagues on the Judiciary Committee looked at a much higher standard of clear and convincing evidence.

But, coming back to the Senate, to dismiss the case would be unprecedented from a historical standpoint, because it has never been done before; it would be damaging to the Constitution, because the Senate would fail to try the case; it would be harmful to the body politic, because there is no resolution of the issues of the case; but, most importantly, it would show willful blindness to the evidentiary record that has thus far been presented.

An appropriate question, you might ask, is: How should you decide whether this motion should be granted? I would contend that you should decide this issue based upon the facts that you have before you in the record and not on any other criteria. A motion to dismiss should not be granted because you do not think there are presently enough votes for conviction.

Let me assure you that I want this over. As Bruce Lindsey, sitting over here, will probably attest, this is bad for me politically. I am from Arkansas, the State Bill Clinton dominated politically for years, and certainly its most influential politician. But we do have our responsibilities, and I happen to believe that we should follow the process which is dictated by the Constitution and the facts.

I know I am making legal arguments to this Court of Impeachment, in which I understand you make your own rules, and I respect that. But, as opposing counsel pointed out on many occasions, there are reasons for these rules of procedure and they have relevance to your deliberations today. Again, your decision should be based upon the facts, and so let's discuss the facts.

Does the record support the charges of obstruction of justice and perjury? To look at this from a different angle, because we talked about it at length, let's examine how the President responded to critical developments in the Federal civil rights case in which he was a defendant.

First, how did he handle those people he knew to be witnesses? The President did not want them to testify, and, if they did testify, he did not want them to testify truthfully. Two of those witnesses were Monica Lewinsky and Betty Currie.

Clearly, he did not want them to testify in the Federal civil rights case and, likewise, his lawyers today do not want those witnesses to testify before this body.

Now, let's look at what happened when the President learned that Monica Lewinsky was on the witness list. Very quickly, it was December 5 that the witness list came in. He learned about it probably the next day, December 6. Monica Lewinsky visited with him and said Vernon Jordan was not doing very much on the job front.

The President's response is, okay, I will talk to him. I will get on it.

Now, Ms. Lewinsky assumed that was a brushoff, but he was serious about it because he later learned that day that at the latest—he learned later that day that Monica was on the witness list when he met with the lawyers.

After that, the next day, he meets with Vernon Jordan at the White House. And even though Mr. Jordan says he thinks it was unlikely that the job situation was discussed, Mr. Jordan makes it clear that he ultimately went to work to get Ms. Lewinsky a job at the direction of the President. According to Mr. Jordan's grand jury testimony on June 9, he testified, "The President asked me to get Monica Lewinsky a job." That is undisputed. He had testified to the same grand jury, "He," referring to the President, "is the source of it coming to my attention in the first place."

And so as the result of the President's request, Vernon Jordan got to work, met with Ms. Lewinsky, assisted her in securing key job interviews, and kept the President informed. The job search became critical when she was put on the witness list on December 5, and the December 11 order of Judge Wright served to reinforce the urgency of the matter.

Now, all of this was happening when the President knew she was a witness in the civil rights case, but the individuals affected by the President's unlawful scheme of obstruction may not have been privy to his plans. He kept Ms. Lewinsky in the dark about her being a witness until he had the job search well underway. And Mr. Jordan indicates that he was simply trying to get Ms. Lewinsky a job at the direction of the President without any clue that she was a witness until she got the subpoena on December 19.

Now, the President kept his information about Ms. Lewinsky being on the list away from her until he called her at 2 a.m. in the morning on December 17 to let her know the news.

So how does the President handle witnesses in the judicial system that are a danger to him? He wanted to make sure that they were taken care of and cooperative in concealing the truth from the courts.

The next critical step for the President to assure that Ms. Lewinsky sticks with her predesigned cover stories was that she would not deviate from that even though they were now in the court system. Vernon Jordan testified in the grand jury that "it didn't take an Einstein to know when she was under subpoena the circumstances changed," and, of course, that is clear.

When Ms. Lewinsky was placed on the witness list, the truth became a threat to the President. He tried to avoid the truth at all costs and was willing to obstruct the legal processes of the judicial system in order to protect himself. The obstruction started with the job favors and then continued through the December 17 conversation with the President when the President encouraged her to keep using the cover stories even though she would be under oath as a witness, encouraged her to sign a false affidavit, and then on December 28, according to the testimony of Ms. Lewinsky, the President sent Betty Currie to retrieve items of evidence for the purpose of concealment and with the obvious effect of obstructing the truth.

Despite the concerted effort of the President in keeping Monica Lewinsky from being a truthful witness, the President was not yet home free. He still had to go through the hurdle of his own deposition on January 17. And even though he knew there were going to be questions about Monica Lewinsky, he was hopeful that the false affidavit, the representations of his attorney, Robert Bennett, and the President's own affirmation of the false affidavit would be sufficient to prevent questioning about Ms. Lewinsky. But it didn't work. Despite this effort, the Federal district court judge ordered the President to respond to the questions. At that point he had a choice. He could tell the truth under oath, or he could provide false statements. He chose the latter, and that decision forced a continued pattern of obstruction.

During the deposition, he asserted the name of Betty Currie at least six times, and by doing so he dared the plaintiff's lawyers to question Ms. Currie as a witness. They knew it, and he knew it. When the Jones lawyers returned from the deposition, they immediately set about issuing a subpoena for Betty Currie. And what did the President do? He immediately set about attempting to assure that Betty Currie would not state the truth when called as a witness.

They defended that she wasn't a witness, she wasn't a prospective witness, but yet we produced the subpoena that she was a prospective witness, and they wanted her to testify, and everyone knew it. The President called her at home, arranged for her to come in the next day, and put her through the questioning: He was never alone with Monica, trying to establish that; that Monica was the aggressor and that the President did nothing wrong. That is what he was trying to accomplish through his questioning of Betty Currie.

Can you imagine how uncomfortable Betty Currie was, must have felt on that occasion, being called in to see her boss, then having the President recreate a fictional account in order to prevent the truth from coming out in a court of law? But once was not enough, and 2 days later Ms. Betty Currie was brought in for the same series of questions. The message was clear. You have to cover for the President even though the purpose was unlawful.

And so we see a pattern developing. When it comes to a witness, whether it is Monica Lewinsky or Betty Currie, the choice is made. The President encouraged the witness to lie, and the President chose to impede the administration of justice rather than assuring that the laws be faithfully executed.

But the President had one final choice, and that was in his grand jury testimony in August. At this point, the embarrassment of the relationship was public, and that could no longer serve as an excuse not to tell the truth. But, once again, the President chose not to abide by his oath but to evade the truth and provide false statements; not to protect his family, not to preserve the dignity of the Presidency, but to prevent the grand jury from knowing the truth in their investigation and to continue the coverup began during the truth-seeking process in the civil rights case.

I do not have time to cover all the facts, but they are more than substantial, they are compelling, and they are convicting.

Let me leave you with some questions. First of all, who asked Vernon Jordan to get Monica Lewinsky a job? The answer? It was the President.

Secondly, who suggested that Monica Lewinsky sign an affidavit to avoid testifying in the civil rights case, which by its nature had to be false? The answer? It was the President. Who obstructed the truth when Monica Lewinsky was subpoenaed as a witness? It was the President. Who impeded the gathering of evidence when the Federal court subpoena called for the production of gifts? The answer? It was the President. Who tampered with the testimony of Betty Currie when it was clear she was a witness in the case? It was the President. Who took an oath and failed to tell the truth before the courts of our land? It was the President.

I state these facts with sadness, but these facts are true. The motion should be defeated.

I thank the Senate. On behalf of the managers, Mr. Chief Justice, I reserve the remainder of the time.

The CHIEF JUSTICE. Very well. The Chair recognizes counsel for the President.

Ms. Counsel SELIGMAN. Mr. Chief Justice, ladies and gentlemen of the Senate, distinguished House managers, good afternoon. My name is Nicole Seligman. I am a member of the law firm of Williams & Connolly here in Washington, DC. I have been privileged to represent President Clinton as personal counsel since 1994.

I am honored to stand before you today to argue in support of the motion to dismiss the impeachment proceedings that has been offered by the senior Senator from West Virginia, Senator BYRD.

The Constitution reposes in this body and nowhere else the sole authority to try impeachments. It has placed in your hands alone the decision whether to dismiss now or to go forward. There is no judicial review. There is no judicial guidance other than that which each of you, in your wisdom, may choose to apply by analogy from judicial experience. There are no particular rules of civil or criminal procedure that you must follow. The Constitution has freed you from that. It has wisely placed in your hands alone the ability to make a sound judgment in the manner you think best for the reasons you think best, based on your wisdom and experience, as to what is best for this Nation at this moment in the proceedings.

We submit to you that the moment has arrived where the best interests of the Nation, the wise prescription of the framers, and the failure of the managers' proof, all point to dismissal. You have listened. You have heard. The case cannot be made. It is time to end it.

Without presuming to infringe on the constitutional authority that is yours alone, and without repeating at undue length the arguments that you heard over the past few weeks, I do want to set out briefly the reasons that we believe to be some of the grounds on which an early and fair disposition of this difficult matter might rest. There are at least four such grounds. Each one stands by itself as sufficient reason to vote for the motion of Senator BYRD.

The first ground is the core constitutional issue before you, the failure of the articles to charge impeachable offenses. They do not do so. They do not allege conduct that, if proven, violated the public

trust in the manner the framers intended when they wrote the words "treason, bribery, or other high crimes and misdemeanors." For absent an element of immediate danger to the state, a danger of such magnitude that it cannot await resolution by the electorate in the normal cycle, the framers intended restraint. There is no such danger to the state here. No one has made that claim, or could, or would. A vote for the motion is a vote for constitutional stability.

Impeachment was never meant to be just another weapon in the arsenal of partisanship. By definition, a partisan split like that which accompanied these articles from the House of Representatives creates doubt that makes plain a constitutional error of the course that we are on. As Senator William Pitt Fessenden wrote 130 years ago on a great and decisive historical occasion, the impeachment trial of Andrew Johnson:

> Conviction upon impeachment should be free from the taint of party and leave no ground for suspicion upon the motives of those who inflict the penalty.

His words echoed those of Alexander Hamilton who, in the much quoted Federalist 65, had warned, in his words, of "the greatest danger that the decision"—that is the decision by the Senate—"will be regulated more by the comparative strength of the parties than by the real demonstrations of innocence or guilt."

Now, Mr. Manager GRAHAM has candidly acknowledged that reasonable people could disagree about the propriety of removal. He said they absolutely could. We suggest to you that there can be no removal when even the prosecutor agrees that such reasonable doubts exist. If reasonable people can disagree, we suggest to you that reasonable Senators should dismiss. The constitutional standard for impeachment is not met here.

The second and third grounds we offer to you relate to the deeply flawed drafting of the articles by the House of Representatives. They have left the House managers free to fill what Mr. Ruff described as "an empty vessel," to define for the House of Representatives what it really had in mind when it impeached the President. But that is not a role that the Constitution allows to be delegated to the House managers. It is not a role that the Constitution allows them to fill. It is a role that is explicitly and uniquely reserved to the full House of Representatives which, under our Constitution, has the sole power to impeach.

The articles also are unconstitutionally defective for yet another reason, because each article combines a menu of charges, and the managers invite the Members of this body to convict on one or more of the charges they list. The result is the deeply troubling prospect that the President might be convicted and removed from office without two-thirds of the Senate agreeing on what the President actually did. Such a result would be in conflict with the requirement that the President cannot be convicted unless two-thirds of this body concurs. The requirement of a two-thirds supermajority is at the core of the constitutional protection afforded the President and the American people. The Founding Fathers were wise to guarantee that protection, and it has protected the Presidency for more than two centuries. The House must not be allowed to erode that protection today. The articles, as drafted, are unconstitutional.

The fourth ground for the motion is based on the facts. Mr. Manager MCCOLLUM has twice asserted that this body must first determine whether the President committed crimes, and then move on to the question of removal from office. Recognizing that each Senator is free to choose the standard of proof that his or her conscience dictates, we submit that if the question is, as the managers would have it, whether the President has committed a crime, that standard should be proof beyond a reasonable doubt. And it is clear that such a standard, that is, proof to the level of certainty necessary to make the most significant decisions you face in life, cannot possibly be met here. The presentations last week demonstrated that the record is full of exculpatory facts and deeply ambiguous circumstantial evidence that will make it impossible for the managers to meet this standard or, in fact, any standard that you might in good conscience choose to apply here.

The managers have, with great ingenuity, spun out theories of wrongdoing that they have advanced repeatedly, persistently, passionately. But mere repetition, no matter how dogged, cannot create a reality where there is none. The factual record is before you. We submit that it does not approach the kind of case that you would need to justify the conviction and removal of the President from office. And calling witnesses is not the answer. All the evidence you need to make your decision is before you, documented in thousands of pages of testimony given under oath or to the FBI agents and Mr. Starr's prosecutors under penalty of law.

These, then, are the four grounds for the motion to dismiss. I know many of these arguments are not new to you, and I will try to be brief as I review them.

The question before this body requires solemnity on all of our parts. It inevitably creates no small measure of apprehension. In our Nation's political history, in our legal history, it is fair to say that few decisions of such overwhelming magnitude have been confronted by this body. There could be no matter more clearly placed in your hands alone by the Constitution, and on its resolution rests more than the political fate of William Clinton; there rests the course of our democracy in the coming years of the new century and for untold years thereafter.

Constitutional history confirms that the decision before you was meant to be significant and difficult to make. It demonstrates that only the most extraordinary of charges warrants the most extraordinary of outcomes. Any question, any doubt, must be resolved in favor of the electoral will, for it is the will of the people, the people who have all sovereignty in our law, that in the end is the foundation of our democracy. And we submit that the doubt here is pervasive: Doubt about whether the charged conduct, efforts to conceal a private personal embarrassment, could reasonably be deemed a violation against the state at all, let alone a violation so severe as to compel removal; doubt about the constitutionality of the articles as drafted; doubt about the sufficiency of the managers' case; and that doubt upon doubt upon doubt makes a vote to dismiss the only fair choice.

Let me turn then to the fundamental constitutional argument.

The impeachment power was meant to remove the President of the United States from office only for the most serious abuses of

official power or for misbehavior of such magnitude that the collective wisdom of the people would compel immediate discharge. One of America's leading professors of constitutional law, Professor Akhil Amar of the Yale Law School, has framed the problem poignantly and concisely, stating:

> The question to ask is whether [President Clinton's] misconduct is so serious and malignant as to justify undoing a national election [and] canceling the votes of millions.

We know the answer. It was provided by Charles Black in his classic book on impeachment when he wrote that:

> Impeachment and removal should be reserved only for offenses that so seriously threaten the order of political society as to make pestilent and dangerous the continuance in power of their perpetrator.

James Madison made much the same point two centuries earlier, stating that an impeachment provision of some kind was "indispensable" because a President's "loss of capacity or corruption . . . might be fatal to the Republic."

The statements and writings of the framers of our Constitution and centuries of scholarship and the meaning of that brief but so significant phrase, "high crimes and misdemeanors," enable us to establish with solid assurance that the conduct charged against the President does not amount to an impeachable offense.

Our argument today is a simple one: Ordinary civil and criminal wrongs may be addressed through ordinary civil and criminal processes, and ordinary political wrongs may be addressed at the ballot box or by public opinion. Only the most serious public misconduct, aggravated abuse of Executive power, is meant to be addressed through exercise of the Presidential impeachment power.

The conduct here arises out of a private lawsuit. Let me talk for a moment about that lawsuit which is the backdrop for these proceedings.

The Jones case arose out of an alleged incident that predated the President's first term as President. The charges at issue here arise out of the President's conduct in that lawsuit. No charge relates to his official conduct as President. Indeed, as we know, the Supreme Court told President Clinton that he could not delay defending the Jones lawsuit until he was out of office. And when it ruled that way, the Court emphasized just this very point. It made clear that he might have been able to delay or avoid the lawsuit if it had related to his official conduct, because the law provides various immunities for such lawsuits; but precisely because it related to his private actions, it would be allowed to go forward.

In drawing that conclusion, interestingly, the Supreme Court actually looked to the wisdom of James Wilson, a framer, a Supreme Court Justice, and a constitutional commentator, and cited the distinction he drew between a President's acts performed in his "public character," for which he might be impeached, according to Justice Wilson, and acts performed in his private character, to which the President is answerable, as any other citizen, in court.

We agree that there might be extreme cases where private conduct would so paralyze the President's ability to govern that the impeachment power must be exercised, where the certainty of guilt and the gravity of the charge would leave no choice. But charges

arising out of the President's efforts to keep an admittedly wrongful relationship secret are, by no analysis, of that caliber.

Some have suggested that making this argument is the same as arguing that the President is above the law. That simply is not so. The often repeated statement that no man—or woman, I should add—is above the law is, of course, true. Once he leaves office, the President is as amenable to the law as any citizen, including for private conduct during his term of office. As my colleagues, Mr. Ruff and Mr. Craig, argued to you last week, if a grand jury should choose to consider charges against this President, his status as a former President will not prevent that consideration.

But here is the point: Impeachment is not meant to punish an individual; it is a protection for the people; in Alexander Hamilton's words, a remedy for great "injuries done to the society itself." It is, as your 19th century predecessor, Senator Garrett Davis, pointed out in the Andrew Johnson proceedings, "the extreme remedy . . . intended for the worst political disorders of the executive department."

The House managers appear to argue that the President must be removed nonetheless, because to do otherwise places him above the law. But there is one thing that can be said with certainty about the impeachment power. Although it may have that result, it is not meant to punish the man, to set an example, or to provide a "cleansing" of the political process; it is meant to protect the state. If it is punishment the House managers seek, they are in the wrong place, in the wrong job, at the wrong time, and for the wrong reasons.

A question has arisen whether, as a general matter, any violation of law demands removal because it would be a violation of the President's duty to take care that the laws be faithfully executed or a breach of the public trust. But, again, the history of the clause makes clear that the framers intentionally chose not to make all crimes or even all felonies impeachable.

I suggest we would all agree that, in the broadest possible sense, a proven violation of criminal law is a violation of a public trust. But the framers consciously elected not to make impeachment the remedy for "all crimes and misdemeanors." When the framers wished to address all crimes, they knew how to do it, and they did it. In article IV, section 2, the Constitution states that, "A Person charged in any State with Treason, Felony, or other Crime" is susceptible to extradition—"or other crime." The framers knew how to say it, but they didn't say it about impeachment, because that is not what they meant.

Some also have argued that the experience of judicial impeachments in this body undermines this argument. They claim that judges have been removed for purely private conduct and that a President should be treated no differently. This argument completely misses the mark as well.

By constitutional design, judges are very different from a President. Presidents are elected for a fixed term, while Federal judges serve with life tenure. Presidents are elected by the people in one of the great periodic exercises of national will, and their tenure is blessed as the choice of the people.

Judges, on the other hand, are appointed and confirmed by the representatives of the people, but their selection does not represent a direct expression of the will of the people. Judges' tenure is conditioned on good behavior, while that of a President is not. And there is an obvious reason for this distinction. Life tenure, which was designed to assure judicial independence, plainly becomes a problem in the event of a judge who is not fit to serve. A President may be voted out by the people, a judge may not; hence the good behavior requirement and the duty upon the Congress to enforce it in those exceptional cases where it must be enforced.

It is possible to debate forever whether the good behavior clause represents an independent basis for impeachment or whether, in the case of judges, it is a factor to be weighed when this body exercises its sound judgment to decide what constitutes a high crime or misdemeanor. But there is no need to resolve that dispute here. Either way, it is clear, as the Watergate impeachment inquiry report established, that the term "high crimes and misdemeanors" is given content by the context of the charge and the office at issue. Because of issues of legitimacy, accountability, and tenure, the framers decided that Federal judges needed the additional check of the good behavior clause—language they left out of the articles creating Congress and the Presidency.

And the Presidency is, of course, different. Alexander Hamilton said, in Federalist 79, that a judge could be impeached for malconduct. But in the words of the Watergate Impeachment Inquiry Report—a report I remind you that Mr. Manager CANADY has commended to your consideration—Presidential impeachment is distinctive. The report stated—and I quote, because it is an important quote—"Because impeachment of a President is a grave step for the nation, it is to be predicated only upon conduct seriously incompatible with either the constitutional form and principles of our government or the proper performance of the constitutional duties of the presidential office. . . . The facts must be considered as a whole in the context of the office," the report concludes. The office matters. For judges, the good behavior standard comes in one way or the other. For the President, the standard is different.

As I mentioned, Mr. Manager GRAHAM candidly acknowledged last Saturday that reasonable people could disagree as to whether this President should be removed from office, even if they believe he acted as charged—reasonable people could disagree. In this connection, consider, if you will, the words of Senator William Pitt Fessenden, written 130 years ago. Senator Fessenden was one of the seven brave Republicans who crossed party lines to vote against the conviction of President Johnson in his 1868 impeachment trial. He wrote—and I quote—"the offense for which a Chief Magistrate is removed from office . . . should be of such a character as to commend itself at once to the minds of all right thinking men as, beyond all question, an adequate cause." Think about that phrase—"beyond all question." Where there is room for reasonable disagreement, there is no place for conviction.

If many in this Chamber and in this Nation believe that these charges do not meet the bar of high crimes and misdemeanors, then the question must be asked, Why prolong this process?

I would like to turn briefly now to two grounds for dismissal based on the manner in which the House drafted these articles. The first is that each of the articles contain several quite different charges. The House compounded its charges. It is tempting to ask how, in a matter of such importance, we can urge what might appear to be a procedural, highly technical argument like this one.

There are several answers to that. The first is that it is neither "procedural" nor "highly technical." It goes to the very heart of our constitutional protections and raises concerns about fairness and the appearance of fairness in this proceeding as so many Senators have so eloquently noted in the past when the issue has arisen.

As Senator KOHL stated in the Judge Nixon impeachment matter, in which a similar omnibus article was defeated—and I quote:

> The House is telling us it's OK to convict Judge Nixon on Article III even if we have different visions of what he did wrong. But that's not fair to Judge Nixon, to the Senate, or to the American people. Let's say we do convict on Article III. The American people—to say nothing of history—would never know exactly which of Judge Nixon's statements we regarded as untrue. They'd have to guess. What's more, this ambiguity would prevent us from being totally accountable to the voters for our decision.

As the Senator said, that is an unacceptable outcome, one that was "not fair to Judge Nixon, to the Senate, or to the American people."

Judge Nixon was acquitted on this article. We suggest to you that the House is now asking this Senate to convict President Clinton on just such articles. And that is not fair either to President Clinton, to this Senate, or to the American people.

The second response is that—even if this troubling problem were procedural—fair, constitutional procedures go to the heart of the rule of law. As the Supreme Court has stated, "The history of liberty has largely been the history of observance of procedural safeguards." It would, indeed, be ironic if, in the course of this proceeding in which the vindication of the rule of law has so often been invoked, this body were to ignore an important procedural flaw.

The legal basis for this argument is by now well known. Article I, section 3 of the Constitution provides that on articles of impeachment "no Person shall be convicted without the Concurrence of two-thirds of the Members present." This requirement is plain. There must be, in the language of the Constitution, "Concurrence," which is to say, genuine, reliably manifested agreement among those voting to convict.

Without clarity on exactly what the President would be convicted for, there can be no concurrence. These requirements of concurrence and a two-thirds vote are the twin safeguards of the framers' plain intent to assure that conviction not come easily.

And let there be no doubt, these articles present textbook examples of a prosecutorial grab bag. Look at article II, which, by its terms, charges obstruction of the Jones litigation. It presents six topics related to the Jones litigation and one related to the very separate issue of grand jury obstruction. The first six acts alleged are unrelated in time or alleged intent to the seventh. Under no conceivable theory are they part of the same scheme, and no one ever has claimed them to be. But as it is drafted, and as it must be voted on by this body, under the Senate rules, the article would

allow certain Senators to convict on obstruction of the Jones case and others on grand jury obstruction. That is not concurrence in a vote on an article, as the Constitution demands it. An indictment against any American drafted like these articles could not go near the jury. It would be dismissed. And no lesser standard should apply here.

A second fatal flaw in the drafting is their complete lack of specificity, which makes it impossible to know precisely what the President is alleged to have done wrong. This defect is most troublesome in the article I perjury charges, which never simply state what the President said that was allegedly perjurious. The defect is a plain and obvious constitutional one: The House of Representatives has unconstitutionally neglected its "sole" power to impeach and delegated to the House managers that which cannot constitutionally be delegated—the power to decide what the House meant. The result has been what can charitably be described as a fluid approach to the identification of charges against the President. The House majority and its managers have sought to add, delete, amend, expand and contract the list as this matter has proceeded from Mr. Starr, to the committee, to the full House, to this body.

They also, mystifyingly, have insisted on couching their charges as examples. How on Earth can an accused defend against examples? Where is the notice? Where is the due process? And no sooner was this very concern raised here by Mr. Ruff than they did it again. This is quite extraordinary.

In response to Mr. Ruff's challenge, the managers put out a press release, on January 19, purporting to list allegedly perjurious statements on which you are to vote. And what did they say? They offered more examples. They said in response—and I quote—"Here are four examples of perjurious statements made to the grand jury:"

Ladies and gentlemen, almost 40 years ago, the Supreme Court made clear that this kind of charging is unacceptable. When an indictment leaves so much to the imagination of individuals, other than the constitutionally designated charging body, it must be dismissed. Again, no lesser standard should apply here.

Our fourth ground for dismissal is based on the facts. The evidence, in the tens of thousands of pages before you, establishes that the case against the President cannot be proven with any acceptable degree of certainty. The record is filled with too much that is exculpatory, too much that is ambiguous, too much from the managers that requires unfounded speculation.

A very brief look at the articles and the facts makes clear that in light of the uncontested exculpatory facts, such as the direct denials from Ms. Currie, from Mr. Jordan, and from Ms. Lewinsky of various alleged misconduct, the managers cannot possibly meet their burden of proof here. Look briefly at article I. Much of it challenges the President's assertions of his own state of mind, his understanding of the definition given to him, his understanding of the meaning of a word, his legal opinion of his Jones testimony, his mindset during statements of his lawyer, Robert Bennett. The managers offer speculation and theories about these matters, but you are not here to try speculation and theories. You are here to try facts. And the facts do not support their theories.

Other claims in article I are so insubstantial as to be frivolous and unworthy of the time and attention of this historic body. Certain answers about the particulars of the admitted intimate relationship between the President and Ms. Lewinsky—whether their admitted inappropriate encounters were properly characterized as occurring on "certain occasions" is but one example—could not possibly have had any bearing on the Starr investigation. These answers were even irrelevant, immaterial, to Mr. Starr.

Remember, in the grand jury the President admitted to the relationship, admitted it was improper, admitted it occurred over time, admitted he had sought to hide it, admitted he had misled his wife, his staff, his friends, the country. But how it began, exactly when it began, how many intimate encounters there were, whether there were 11 or 17 or some other number, and with what frequency, these are details irrelevant to the Starr investigation, and I must say, irrelevant to your decision whether to remove the freely elected President of the United States.

There has been much discussion about the Jones deposition here and whether it, too, is a part of article I. The point is a simple one. The House of Representatives exercised its constitutional authority, and in a bipartisan vote defeated an article of impeachment based on the answers in the Jones deposition. Those answers are not before you and the managers' sleight of hand cannot now put them back into article I. The article charges only the statements made in the grand jury about that deposition. The managers ask you to look at one response: The President's lawyerly assertion that the Jones deposition was not legally perjurious, however frustrating or misleading, and to read that as an affirmation of every answer he gave. But the grand jury testimony must be read as a whole.

What did the President convey during that testimony? Certainly not that he was standing behind every word in the Jones deposition as the whole truth. He spent 4 hours in the grand jury explaining that testimony—adding to it, clarifying it, discussing the confusing deposition questions and answers, and pointing out his efforts to be literally truthful, if not forthcoming, explaining what he had tried to do, the line he had tried to walk, however successfully or unsuccessfully. He laid it all out. He was not asked by Mr. Starr to reaffirm or adopt the earlier testimony, and he did not reaffirm or adopt it.

This brings us to the last issue in article I, the so-called touching issue. My colleague, Mr. Craig, has talked at length about the legal and practical obstacles to a case based on an oath against an oath. Whether compelled by law or practice, the rule reflects the commonsense proposition that there will always be a reasonable doubt as to the truth when the case rests merely on an oath against an oath. That is why seasoned prosecutors said in the House of Representatives that they would never bring such a case. That is why you need no more information to conclude that conviction on that basis will not be possible.

The evidence also undermines the allegations of article II. My colleagues, Ms. Mills and Mr. Kendall, made a detailed review of the allegations in each of the seven subparts of article II. They went over the evidence in great detail, and I am certainly not going to repeat that here. They pointed to the significant amount of di-

rect evidence in the record that controverts the claims made in this article, most notably the consistent statements by Ms. Lewinsky that no one ever asked, suggested, or encouraged her to lie, and that no one ever promised her a job for her silence.

They demonstrated that with regard to the transfer of gifts, the testimony of Ms. Lewinsky and Ms. Currie has consistently been inconsistent, but that even Ms. Lewinsky has acknowledged it was she who was concerned about the gifts and who raised the issue with the President. And the fact that the President gave Ms. Lewinsky more gifts on December 28 simply cannot be reconciled with any theory of the managers' case.

Ms. Mills reviewed the evidence concerning the President's conversation with Ms. Currie on the Sunday after the Paula Jones deposition. However ill-advised that conversation might have been under the circumstances, it was not criminal. The President was motivated by his own anxieties and by a desire to find out what Ms. Currie knew in anticipation of the media storm he feared would break, as it surely did. Contrary to the suggestion of Mr. Manager HUTCHINSON, Ms. Currie had not yet been subpoenaed at the time of that conversation. Ms. Currie was not on any Jones case witness list at the time of the conversation. She testified that she felt absolutely no pressure to change her account during that conversation. She never testified that she felt uncomfortable—again, contrary to the suggestion of Mr. Manager HUTCHINSON. She was not a witness. There was no pressure. There is a completely reasonable explanation.

Let me be clear here: There is no evidence that the President ever asked Ms. Lewinsky to file a false affidavit or told her to give false testimony if she appeared as a witness. Both believed Ms. Lewinsky could file a limited but true affidavit that might—might—avoid a deposition in the Jones case. While the two had discussed cover stories to explain Ms. Lewinsky's visits, Ms. Lewinsky never testified that they discussed the cover stories in the context of the possibility of her testifying personally, as article II alleges.

Now you have heard in detail from Mr. Craig and Mr. Kendall about the fleeting moment in the Jones deposition when Mr. Bennett tried unsuccessfully to prevent the President being questioned about Ms. Lewinsky by citing her affidavit. The judge immediately overruled the objection. It did not obstruct in any way the Jones lawyers' ability to question the President.

The statement had no effect. And the tape of the President cannot disprove the President's testimony that he wasn't paying attention. He doesn't comment, concur, or even nod. With a weak case at hand, the managers have tried to turn a blank stare into a high crime.

The last subpart of article II is flawed in many respects: The article alleges obstruction of the Jones case, but the President's misleading statements to his White House aides about Ms. Lewinsky had no effect on that case at all. In any event, the effect of the President's statements on his aides was no different than on the millions of Americans who had heard and seen the President make similar denials on television.

And finally, the subpart claims obstruction of the grand jury, whereas the whole point of article II is alleged obstruction of the Jones case. As I asked before, what is it doing here?

As to Ms. Lewinsky's job search, all the managers have presented is a theory, a hypothesis in search of factual support.

The direct evidence is clear and uncontradicted. Ms. Lewinsky, Mr. Jordan, the President, and people at the New York City companies Ms. Lewinsky contacted all testified that there was no relation of any of the job search activity to the Jones case—none. Not a single witness supports the managers' theory. As we demonstrated, their core theory that the job assistance intensified after the Court's December 11 order was based on plain and simple error. And without that support, the theory collapsed.

No doubt, the managers' response will be that that is why witnesses are needed, to help the managers make their case. But witnesses will not fill the void in the evidence:

First, because the evidence, as we have shown, is overwhelmingly uncontested. If there is no dispute, why do witnesses have to be questioned at all? House Majority Counsel Schippers himself made this point when speaking of the very same transcripts and FBI interviews that you all have before you. He stated to the Judiciary Committee: "As it stands, all of the factual witnesses are uncontradicted and amply corroborated."

Second, because the actual disagreements—for example, what was in the President's mind in his deposition?—are about conclusions that must be drawn from the undisputed evidence, not disputes in the evidence itself. More evidence will not inform a judgment on the President's state of mind.

Third, because those witnesses with testimony pertinent to the charges have already repeated their testimony again and again and again—in some instances, 5 or 10 times—over and over and over to FBI agents, to prosecutors, to grand jurors. Experienced career prosecutors, trying to make their best case against the President, questioned scores of witnesses. They compiled tens of thousands of pages of evidence. They questioned Ms. Lewinsky on at least 22 separate occasions. They questioned Mr. Jordan on at least five occasions. They questioned Ms. Currie on at least eight occasions. On one day alone—July 22, 1998—prosecutors asked Ms. Currie more than 850 questions, and that was only 1 of her 5 appearances before the grand jury or FBI agents. And they did, in fact—contrary to the suggestion of the managers—question witnesses, including Ms. Lewinsky, after the President's testimony to the grand jury.

These witnesses whom I have mentioned, who were questioned repeatedly, are not alone. They could not possibly add to their testimony, or amend it, in any significant way that could alter the judgment you could make today. Yet, it is the hope that these witnesses will be forced to change their testimony, to provide evidence where there now is none, that drives the current desire to question them.

Let me make a few final points about this witness issue. "Bringing in witnesses to rehash testimony that's already concretely in the record would be a waste of time and serve no purpose at all." That is our argument, but those are not my words, they are the words of Mr. Manager GEKAS, spoken just last fall, talking about

this same factual record you have before you. And Mr. Manager GEKAS was correct.

"We had 60,000 pages of testimony from the grand jury, from depositions, from statements under oath. That is testimony that we can believe and accept. Why re-interview Betty Currie to take another statement when we already have her statement? Why interview Monica Lewinsky when we had her statement under oath, and with a grant of immunity that, if she lied, she would forfeit?" Again, that is our argument, but, again, those are not my words, those are the words of Chairman HYDE. He, too, was correct. Those words apply with equal force today. The witnesses are on the record. Their testimony is known. There is no need to put them through the ordeal of testimony again.

The House managers, no doubt, will answer that that was then, this is now. But that is not good enough. The House had a constitutional duty to gather and assess evidence and testimony and come to a judgment as to whether it believed the President should be removed from office—not to casually and passively serve as a conveyor belt between Ken Starr and the U.S. Senate, not to ask this body to do the work the House failed to do.

The actual power to remove the President resides here, of course. But the power to take that first step rests with the House. And the House exercised it: The articles explicitly find that certain conduct occurred and that that conduct warrants "removal from office and disqualification to hold and enjoy any office of honor, trust, or profit under the United States." If there was any doubt about the testimony on which they based their judgment in reaching that conclusion, such doubt should have been resolved before any Member rose to say "aye" to an article of impeachment calling, for the first time in 130 years, for the Senate to decide on the removal of the President.

The President did not obstruct justice. The President did not commit perjury. The President must not be removed. The facts do not permit it.

Now, ladies and gentlemen of the Senate, I hope I have outlined clearly for you some of the many valid grounds on which you might base a decision to vote for the motion offered by Senator BYRD.

On constitutional grounds, the matters simply don't meet the test of high crimes and misdemeanors, as specified by the framers or interpreted by hundreds of historians. As a matter of law, these articles are defective. In a court, they would be dismissed in a heartbeat for vagueness and for being prosecutorial grab bags.

The evidence itself, after being gathered in what may be one of the largest criminal investigations in this country's history, fails to offer a compelling case and is based largely on weak inferences from circumstantial evidence. Each of these is reason enough to end this trial now, without further proceedings.

As Senator Bumpers said more personally and eloquently than I could hope to, the President has been punished; he is being punished still—as a man, as a husband, as a father, as a public figure. Beyond his family, you have been reminded that the criminal law will still have jurisdiction over Bill Clinton the day he leaves office. And while I am confident the case would have no merit in a court

of law, that is the venue in which justice may be sought against an individual.

So the sole question you are faced with is the most important one: Do you, for the first time in 210 years of our freedom, set aside the ultimate expression of a free people and exercise your power to remove the one national leader selected by all of us?

If you don't believe this body should remove the President, or if you believe that no amount of requestioning of witnesses or torturing facts will change enough minds to garner the two-thirds majority necessary to remove the President, or if you simply have heard enough to make up your mind, then the time to end this is now.

The President has expressed many times how very sorry he is for what he did and for what he said. He knows full well that his failings have landed us in this place, and he is doing all he can to set right what he has done wrong.

The entire Nation—indeed the world—is now looking to this body, to this Chamber, to this floor, for sound judgment; and we are asking you not to answer a serious personal wrong with a grievous constitutional wrong. When we ask you to vote for Senator BYRD's motion to dismiss, we do not mean that nothing ever happened, that this is no big deal—and that is where we lawyers have done a disservice to the language—because this is a big deal. It is a very big deal. Punishment will be found elsewhere. Judgment will be found elsewhere. Legacies will be written elsewhere. None of that will be dismissed. None of that can ever be dismissed.

We ask you to end this case now so that a sense of proportionality can be put back into a process that seems long ago to have lost all sense of proportionality. We also ask you to end the case now so that the family members and others who did no wrong can be spared further public embarrassment.

We also ask you to end this case now so that the poisonous arrows of partisanship can be buried and the will of the people can be done—allowing all of you to spend your full days on the most pressing issues of the country.

You have heard the charges in full; heard the defense. Now is the time to define how the national interests can best be served—by extending this matter indefinitely or ending it now. We submit that it is truly in the best interest of this Nation to end this ordeal in this Chamber at this time and in this way.

Thank you.

Mr. LOTT addressed the Chair.

The CHIEF JUSTICE. The Chair recognizes the majority leader.

Mr. LOTT. Could I inquire? Is there further presentation from the White House counsel, or will the time be used for concluding remarks by the House managers?

The CHIEF JUSTICE. The White House counsel has 6 minutes remaining; the managers have reserved 36 minutes.

Mr. Counsel RUFF. There will be no further presentation, Mr. Chief Justice.

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Mr. LOTT. In view of that, Mr. Chief Justice, I understand the White House counsel will have no further presentation to make, so

what is left would be the concluding remarks by the House managers. I would like for us, when that is concluded, to go right into the votes.

In view of that, I think it would be a good idea to take a 15-minute break at this point. And I ask unanimous consent for that.

There being no objection, at 4:12 p.m., the Senate recessed until 4:38 p.m.; whereupon, the Senate reassembled when called to order by the Chief Justice.

The CHIEF JUSTICE. The Chair recognizes the majority leader.

Mr. LOTT. Mr. Chief Justice, I believe we are ready now for the closing part of the argument by the House managers on the motion to dismiss.

The CHIEF JUSTICE. The Chair recognizes the House managers. Mr. HUTCHINSON.

Mr. Manager HUTCHINSON. Thank you, Mr. Chief Justice, Senators. My fellow Manager GRAHAM has extended me a few minutes before he comes up here just to allow me to respond to a couple of factual assertions by the White House counselors during the recent presentation. I know that there was a reference made to the impeachment proceedings of former President Nixon, and there were various articles that were considered. But one of them that I don't believe was talked about was obstruction of justice. And I believe that the Senators in this Chamber would agree that obstruction of justice has historically been a basis for impeachment of public officials because of the impact that it has on the administration of justice. And that was historically true during the time of the impeachment of President Nixon. It was an issue during that time and it should be no less of a concern this year, in 1999.

Now, when I listen to a defense attorney make a presentation, oftentimes I will listen to what they didn't cover as much as what they did cover. And you always have to go back to that because many times that points to a big gap of something they just can't explain. As I listened to the presentation, of course they addressed the assertion that Ms. Betty Currie was, in fact, not a witness at the time the President called her in and went through the questioning of her after his deposition on January 17. But, yet, it has been clearly established that she was a known witness at the time. Now, they hoped, they prayed, they wished, they counted for the fact that that subpoena would never be uncovered. But the subpoena was uncovered. The fact was established that she was put on the witness list and that she was a known witness at the time. But the fact is, it does not matter. She was a prospective witness, and that was what the President did when he came back and talked to her.

But what has never been addressed—has never been addressed—is why in the world did the President believe he needed to talk to her a second time. It was one time the questioning, but 2 days later she was brought in and taken through the same paces. The answer was, "Well, he explained it." Well, he tried to explain why he did it the first time; he was trying to get information. There could be no explanation for the second instance of which she was called in and questioned. She was a witness, she was a known witness and she had to be talked to, and it was done twice.

Another thing that I do not recall ever being mentioned—they argue that, "Well, there is no evidence of favors on a job search," and I believe that is not supported by the record. How many times has the President's attorneys discussed the description and the report by Mr. Vernon Jordan to the President, "Mission accomplished"? I do not believe they have ever discussed that particular terminology. I do not believe they have ever discussed the terminology, the call from Mr. Vernon Jordan to Mr. Perelman saying, "Make it happen if it can happen."

So I think there are some gaps in their defense; and, clearly, you understand that the facts have supported each of the allegations of obstruction that we have set forth.

They argue that, "Well, there was no evidence of any false affidavit." Whether it is evidence that an affidavit was encouraged by the President of the United States, he suggested the affidavit and, as of necessity, it would have to be false if it was going to be accomplishing the intended purpose.

They are asking you in this motion to dismiss to ignore the evidence that we have presented, to ignore the testimony, the documentary evidence, to ignore common sense and simply to accept the denials of the President of the United States. That is not what a motion to dismiss is about. We ask that we move forward to consider the full development of these facts.

I yield to Mr. GRAHAM.

The CHIEF JUSTICE. The Chair recognizes Mr. GRAHAM.

Mr. Manager GRAHAM. Thank you, Mr. Chief Justice. How much time do we have left?

The CHIEF JUSTICE. The House managers have 32 minutes remaining.

Mr. Manager GRAHAM. Thank you, Mr. Chief Justice. To my colleagues, my chairman wants 11 minutes. So, for my own sake, please let me know when we get close.

[Laughter.]

We meet again to discuss a very, very important event in our Nation's history. To dismiss an impeachment trial under these facts and under these circumstances would be unbelievable, in my opinion, and do a lot of damage to the law and to the ultimate decision this body has to make: whether or not Bill Clinton should be our President.

As I understand the general nature of the law, the facts and the law break our way for this motion. What I would like to discuss with you is whether or not a reasonable person could believe that Bill Clinton should not be our President and the facts that have been presented rise to the level of creating serious doubts about whether he is a criminal, not just a bad man who did bad things. For he is a good man in some ways, as all of us are, and he has done some things that everybody in this body will condemn roundly.

America needs no more lectures about Bill Clinton's misconduct, about his inappropriate relationship. We need no more lectures about his sins. We all have those. We need to resolve, Is our President a criminal? That is harsh, but the facts bear out those statements.

When you dismissed the judges for perjury and filing statements under oath, some of you said some very harsh things about those judges, not because you are harsh people, but because their conduct warranted it.

One thing I am not going to do—and I will quit this job before I do this—I am not going to run over anybody's conscience when they are exercising it as they deem appropriate for the good of this Nation. My name has been brought up a couple of times about whether or not reasonable people can disagree with me and still be reasonable about what we should do in this case. I have told you the best I can that there is no doubt these are high crimes, in my opinion. This is a hard decision for our country, but when I first spoke to you, I thought we would be better off if Bill Clinton left office, and I want the chance to prove to you why. Give me a chance to prove to you why I believe that, why my colleagues voted our conscience to get this case to where it should be, not swept under a rug, but in a trial to a disposition.

I have lost no sleep worrying about the fact that Bill Clinton may have to be removed from office because of his conduct. I have lost tons of sleep thinking he may get away with what he did. But the question was: Could you disagree with LINDSEY GRAHAM and be a good American, in essence? Absolutely. You can disagree with me on abortion, and Mr. HYDE, and I am not going to trample on who you are, because I know that the liberal wing of the Democratic Party and the moderate wing of the Republican Party have different views than I do.

But I didn't come up here to run you down. I came up here to build my country up the way I think it needs to be built up.

Ladies and gentlemen of the Senate, if you will listen to our case, if you will let us explain why we have lost no sleep asking for this President to be removed and why we voted to get it here and you disagree with me at the end of the day, I will never ever say you don't love your country as much as I do. That is what that statement was meant to convey, and it will convey that until I am dead and gone.

The idea that 130 years ago a Senator took a vote and made a statement that the only way you can remove a President is it has to be unquestionable in anybody's mind tells me he sure thought a lot of himself. I am glad to see that stopped in the Senate. One hundred thirty years later, we don't have people like that anymore. What that conveyed to me was that a person made a hard decision and tried to create a standard that slams somebody else who came out differently.

I hope that is not what this is all about. He goes down in history, but I wouldn't want that as part of my epitaph, that when I voted my conscience, I reached a level that if you didn't go where I was, there is something wrong with you.

What did Bill Clinton do, and why are we all here? Are we here because of Ken Starr, because of LINDSEY GRAHAM, because of—why are we here? We are here because William Jefferson Clinton, in my opinion—we are here because on our watch in the House, the President of the United States, when he was a defendant in a lawsuit, instead of trusting the legal system to get it right, did everything possible, in my opinion, to undermine the rule of law, includ-

ing going to a grand jury in August of last year and committing perjury after people in this body and prominent Americans said, "Stop it." And now we are here to say, "Well, we really didn't mean it. The motion to dismiss means we're sort of just kidding, Mr. President."

If you believe he is not guilty of these offenses based on this stage of the trial, then you ought to grant the motion to dismiss, but you will be changing the law as we know it today. We haven't had a chance to present our case, really, and all the facts should break our way. You can believe this if you would like. They stood up here and argued that the conversation between President Clinton and his secretary, Betty Currie, was to find out what she knew to refresh his memory. If you think that when the President goes to Betty Currie and makes the following statement, "Monica wanted to have sex with me and I couldn't do that," that he is trying to figure out what she knew and is trying to refresh his memory, you can do that. I would suggest that "ain't" reasonable. If you believe that he wanted to figure out whether he was alone or not with her and he had to ask Betty, that is not reasonable. That is a crime.

Let me tell you the subtleties of this case, things that really tell you a lot about why we are here—William Jefferson Clinton. Before we get into the subtleties of this case, Senator Bumpers made a very eloquent speech about the ups and the downs of this case and about his relationship with the President and how close it was, and the human nature of what is going on here. But here is what he said:

> You pick your own adjective to describe the President's conduct. Here are some that I would use: indefensible, outrageous, unforgivable, shameless.

How about illegal?

And he says:

> I promise you the President would not contest any of those or any others.

When you put in the word "illegal," everything is a big misunderstanding.

Take this case to a conclusion, so America will not be confused as to whether or not their President committed crimes. There will be people watching what we do here, and they will be confused as to whether or not the conversation between President Clinton and Ms. Currie was illegal or not. Let us know. That is so important.

Let us know—when he went to Monica Lewinsky and talked about a cover story—if that is what we want to go on here every day. And a trial 20 months from now does us no good, because this happened when he was President, ladies and gentlemen. This happened when he raised the defense, "You can't sue me because I'm President."

And what did he do after that defense was taken away from him by the Supreme Court? He went back to somebody who is very loyal to him, somebody who admires him, somebody whom you and I pay her salary—his secretary. And he put her in a situation, through misleading her, that she was going to pass on his lies. That is not what we pay her to do. He put her in a situation where she was going to incur legal costs because he cared more about

himself than he did his secretary. He put his Cabinet members, he put the people who work for him, in a horrible spot.

The subtleties of this case. Let me tell you one of the subtleties of this case. And this was read by the defense in this case:

> The President had a followup conversation with Mr. Morris during the evening of January 22, 1998, when Mr. Morris was considering holding a press conference to blast Monica Lewinsky out of the water. The President told Mr. Morris to be careful. According to Mr. Morris, the President warned him not to be too hard on Ms. Lewinsky because "there's some slight chance that she may not be cooperating with Starr and we don't want to alienate her by anything we're going to put out."

And they were trying to tell you that "ain't" bad, that is a good thing. The best you can get from that statement is the President, when approached with the idea of blasting her, said, "Let's wait."

The subtleties in this case. Who is this young lady? His consensual lover. But this case started not about consensual loving. This case started about something far from consensual loving. This case started about something like a Senator who ran into problems with you all. And if you will let us develop our case, you may have a hard time reconciling those two decisions. But that is up to you.

Please don't dismiss this case. For the good of this country, for the good of the law, let us get to what happened here.

John Podesta—the subtleties of this case—he talked to him about what happened, and he said, "I had no relationship with her whatever." Everybody who went into that grand jury, who talked to Bill Clinton, was lied to. And they passed those lies on to a Federal grand jury. You know what? In America that is a crime, even if you are President. And you need to address whether that happened or not. Don't dismiss this case.

But you know what is even more subtle is that John Podesta, somebody who is very close to him, once he said nothing happened, felt the need to ask one more question—and pardon me for saying this—"Does that include oral sex?" That says a lot about what Mr. Podesta thinks about Mr. Clinton, because he felt he had to go one step further, and in his grand jury testimony he tells us the President took that behavior off the table.

Some of you are worried about the perjury charge in this case. Let me tell you right now, you should have no worries, because you have a dilemma on your hands that is easy to resolve in terms of whether or not the President committed perjury in the grand jury. If you believe that he was truthful when he said, "I never lied," or, "I was always truthful to my subordinates, to the people that work for me, to my aides," then when he told John Podesta, "Our relationship did not include oral sex," he was being truthful. If he was being truthful to John Podesta, he lied through his teeth about everything else in the grand jury when he approached the grand jury with the idea that, "Our relationship was of one kind of sex but not the other." He told John Podesta it wasn't there at all.

You pick the lie, but it is there. And if you can reconcile that, you are better than I am. That is up to you all. And does it really matter? So what? I think it matters a great deal if you are suing for sexually harassing somebody, and they are on to the fact that you can't control yourself enough to stop it 4 or 5 years after you are sued, and you are doing it in the White House with somebody half your age. I think that would matter. Maybe that is the dif-

ference between getting bamboozled in court and having to pay $850,000.

People are going to be confused if we don't bring this case to a conclusion. I suggest to you, it matters a great deal, that any major CEO, any low-level employee of any business in the country, would have been tossed out for something like that. But I know he is the President. Electing somebody should not distance them from common decency and the rule of law to the point that, when it is all over with, you don't know what you have left in this country.

Is that what you want to do in this case? Just to save this man, to ignore the facts, to have a different legal standard, to make excuses that are bleeding this country dry?

The effect of this case is hurting us more than we will ever know. Do not dismiss this case. Find out who our President is. Come to the conclusion, not that it was just bad behavior, it was illegal behavior. Tell us what is right. Tell us what is wrong. Give us some guidance. Under our Constitution, you don't impeach people at the ballot box, you trust the U.S. Senate. And I am willing to do that. Rise to the occasion for the good of the Nation.

Thank you very much.

The CHIEF JUSTICE. Do the House managers have any additional presentation?

Mr. Manager GRAHAM. Yes. I am sorry. Mr. Chief Justice, I now yield to Manager HYDE.

The CHIEF JUSTICE. The Chair recognizes Mr. Manager HYDE.

Mr. Manager HYDE. Thank you, Mr. Chief Justice.

Mr. Ruff, and counsel, and distinguished Senators, I want to be very candid with you, and that may involve diplomatic breaches because I am parliamentarily illiterate. But nonetheless, I looked at this motion to dismiss and I was astounded, really. If the Senate had said something similar to the House, it would certainly have received such treatment as comports with comity, and I don't know enough about comity to wave that flag, but I don't want to waive my rights to raise that issue, anyway.

I know Black's Law Dictionary is a resource book for all of us, but I looked in the Thesaurus about "dismiss" and I came up with "disregard, ignore, brush off." I just am surprised that this motion is here now before we conclude the case.

Some years ago when I was trying lawsuits, I appeared before a judge in Chicago. My opponent was an oldtimer who was just mean—a good lawyer, but he was mean—and the judge interrupted him in one tirade, and he said, "Counsel, I have a lot of respect for you. I wish you had a little respect for this court." I sort of feel that way. I sort of feel that we have fallen short in the respect side because of the fact that we represent the House, the other body, kind of blue-collar people, and we are over here trying to survive with our impeachment articles.

The most salient reason for defeating this motion is article I, section 3 of the Constitution which says that the Senate shall have the sole power to try—to try—all impeachments. Now, a trial, as I understand it, is a search for truth, and it should not be trumped by a search for an exit strategy.

It seems to me this motion elevates convenience over constitutional process and by implication ratifies an unusual extension of

sovereign immunity. If these articles are dismissed, all inferences in support of the respondents, in support of us, the managers, should be allowed; and if you allow all reasonable inferences in our favor, what kind of a message does it send to America to dismiss the articles of impeachment? Charges of perjury, obstruction of justice are summarily dismissed—disregarded, ignored, brushed off. These are charges that send ordinary folk to jail every day of the week and remove Federal judges. But I can see this President is different. But if the double standard is to flourish on Capitol Hill, I don't think we have accomplished a great deal.

Yes, it is cumbersome. These proceedings are archaic in many ways. The question period was something out of the Old Bailey, I guess. I don't know. But democracy is untidy. I will stipulate that. It is untidy. But it is also a blessing. Impeachment and trial by the Senate were devised by our framers to make this difficult process as definitive as possible.

"Let's get the matter behind us." That is a mantra. That is a cliche. We all say it. You won't get it behind you if you dismiss this without voting on the articles. You guarantee contention. You will never get it behind us. Vote these articles up or down. That is the only way we really get it behind us.

What this is—this motion—is a legal way of saying, "so what" to the charges that we levied here. Now, look at what these charges are. So what that the President violated his oath of office and willfully corrupted and manipulated the judicial process for his personal gain and exoneration. So what that President Clinton willfully provided perjurious, false, and misleading testimony to the grand jury on several topics. So what that the President corruptly encouraged a witness in a Federal civil rights action brought against him to execute a sworn affidavit in that proceeding that he knew to be perjurious, false, and misleading. So what that the President encouraged a witness to lie to the grand jury and conceal evidence. So what that the President has undermined the integrity of his office, has brought disrepute on the Presidency, has betrayed his trust as President, and has acted in a manner subversive to the rule of law and justice, to the manifest injury of the people of the United States.

That is an awful lot to dismiss with a brushoff, to ignore with a mere "so what."

No, it may be routine. We certainly don't have enough experience in these impeachment matters, and thank God for that. It may be routine to file a motion to dismiss. But I take very seriously a motion to dismiss, especially when it is offered by the very distinguished Senator who did that. But, in a bipartisan way, I hope some Democrats will support the rejection of this motion, as difficult as it is, because I don't think this whole sad, sad, drama will end—we will never get it behind us until you vote up or down on the articles. And when you do, however you vote, we will all collect our papers, bow from the waist, thank you for your courtesy, and leave and go gently into the night. But let us finish our job.

Thank you.

Mr. WELLSTONE addressed the Chair.

Mr. LOTT. Parliamentary inquiry, Mr. Chief Justice.

The CHIEF JUSTICE. The Chair recognizes the majority leader.

Mr. LOTT. I believe, under the agreement we entered into, the next order of business, then, would be the vote on the motion by Senator HARKIN to go into open session; is that correct?

The CHIEF JUSTICE. The managers have used their time. The Chair recognizes the Senator from Iowa, Mr. HARKIN.

MOTION TO SUSPEND THE RULES

Mr. HARKIN. Mr. Chief Justice, in accordance with rule V of the Senate Standing Rules, Mr. WELLSTONE and I filed a notice of intent to move to suspend the rules solely regarding the debate by Senators on the motion to dismiss, so Senators can have open rather than a closed debate on this issue.

This motion is offered on behalf of myself and Senators WELLSTONE, FEINGOLD, LEAHY, LIEBERMAN, JOHNSON, INOUYE, SCHUMER, WYDEN, KERREY, BAYH, TORRICELLI, LAUTENBERG, ROBB, DODD, MURRAY, DORGAN, CONRAD, KENNEDY, KERRY, DURBIN, BOXER, GRAHAM, BRYAN, LANDRIEU, and MIKULSKI.

My motion is at the desk. However, Mr. Chief Justice, I send a corrected copy of my motion to the desk. There were two typos in it; I want to have it corrected.

Mr. LOTT addressed the Chair.

The CHIEF JUSTICE. The Chair recognizes the majority leader.

Mr. LOTT. If it is appropriate at this point, I ask the Senators if they would remain at their desks so we can go through this vote, and I ask unanimous consent, since we are all here, to reduce the time for the vote from 15 minutes to 10 minutes.

The CHIEF JUSTICE. Without objection, it is so ordered.

Is there objection to the Senator from Iowa modifying his motion?

Without objection, it is modified.

The clerk will report the motion.

The legislative clerk read the motion, as modified, as follows:

I move to suspend the following portions of the Rules and Procedure and Practice in the Senate When Sitting on Impeachment Trials in regard to debate by Senators on a motion to dismiss during the trial of President William Jefferson Clinton:

(1) The phrase "without debate" in Rule VII;

(2) The following portion of Rule XX: ", unless the Senate shall direct the doors to be closed while deliberating upon its decisions. A motion to close the doors may be acted upon without objection, or, if objection is heard, the motion shall be voted on without debate by the yeas and nays, which shall be entered on the record"; and

(3) In Rule XXIV, the phrases "without debate", "except when the doors shall be closed for deliberation, and in that case" and ", to be had without debate".

Mr. HARKIN. Mr. Chief Justice, I ask for the yeas and nays.

The CHIEF JUSTICE. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The CHIEF JUSTICE. The question is on agreeing to the motion. The clerk will call the roll.

The legislative clerk called the roll.

The yeas and nays resulted—yeas 43, nays 57, as follows:

[Rollcall Vote No. 2]

[Subject: Harkin motion to suspend the rules]

YEAS—43

Akaka	Feingold	Levin
Bayh	Feinstein	Lieberman
Biden	Graham	Mikulski
Bingaman	Harkin	Moynihan
Boxer	Hollings	Murray
Breaux	Hutchison	Reed
Bryan	Inouye	Reid
Cleland	Johnson	Robb
Collins	Kennedy	Schumer
Conrad	Kerrey	Specter
Daschle	Kerry	Torricelli
Dodd	Kohl	Wellstone
Dorgan	Landrieu	Wyden
Durbin	Lautenberg	
Edwards	Leahy	

NAYS—57

Abraham	Fitzgerald	McConnell
Allard	Frist	Murkowski
Ashcroft	Gorton	Nickles
Baucus	Gramm	Roberts
Bennett	Grams	Rockefeller
Bond	Grassley	Roth
Brownback	Gregg	Santorum
Bunning	Hagel	Sarbanes
Burns	Hatch	Sessions
Byrd	Helms	Shelby
Campbell	Hutchinson	Smith (NH)
Chafee	Inhofe	Smith (OR)
Cochran	Jeffords	Snowe
Coverdell	Kyl	Stevens
Craig	Lincoln	Thomas
Crapo	Lott	Thompson
DeWine	Lugar	Thurmond
Domenici	Mack	Voinovich
Enzi	McCain	Warner

The CHIEF JUSTICE. Are there any other Senators wishing to vote or change their vote? If not, on this vote the yeas are 43, and the nays are 57. Two-thirds of the Senators voting, and a quorum being present, not having voted in the affirmative, the motion is rejected.

Mr. REID addressed the Chair.

The CHIEF JUSTICE. The Chair recognizes the Senator from Nevada.

Mr. REID. May we have order in the Chamber, please?

The CHIEF JUSTICE. The Senate will be in order.

ORDER FOR CLOSED SESSION

Mr. LOTT. Mr. President, I move that we now go into closed session for the purpose of Senators debating the motion to dismiss.

The motion was agreed to.

The CHIEF JUSTICE. The Chair, pursuant to rule XXXV, now directs the Sergeant at Arms to clear the galleries, close the doors of the Chamber, and exclude all the officials of the Senate not sworn to secrecy.

RECESS

Mr. LOTT. Mr. Chief Justice, I ask unanimous consent that we take a 10-minute break for the purposes of closing the doors and preparing for the debate.

There being no objection, at 5:23 p.m., the Senate recessed until 5:50 p.m.; whereupon, the Senate reassembled when called to order by the Chief Justice.

CLOSED SESSION

[At 5:50 p.m., the doors of the Chamber were closed. The proceedings of the Senate were held in closed session until 9:51 p.m.; whereupon, the Senate resumed open session.]

OPEN SESSION

Mr. NICKLES. I ask unanimous consent that the Senate now return to open session.

The CHIEF JUSTICE. Without objection, it is so ordered.

ORDER FOR ADJOURNMENT

Mr. NICKLES. I ask unanimous consent that when the Senate adjourns, it stand in adjournment until the hour of 12 noon on Tuesday, and I further ask consent that during the remainder of the trial it be in order for Members to submit unanswered questions to the Chair.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

PROGRAM

Mr. NICKLES. On tomorrow, we will resume and begin debate on the motion to subpoena. I now ask unanimous consent that the time for argument be reduced to 4 hours, equally divided, as provided for under Senate Resolution 16.

The CHIEF JUSTICE. Is there objection? It is so ordered.

Mr. NICKLES. Mr. Chief Justice, for the information of all colleagues, tomorrow we will begin the debate at 12 noon instead of 1 o'clock.

ADJOURNMENT UNTIL TOMORROW

Mr. NICKLES. I ask unanimous consent that the Senate stand in adjournment as under the previous order.

There being no objection, at 9:51 p.m., the Senate, sitting as a Court of Impeachment, adjourned until Tuesday, January 26, 1999, at 12 noon.

SUPPORT OF THE WELLSTONE-HARKIN "SUNSHINE" MOTION

Ms. MIKULSKI. Mr. Chief Justice, I rise today in strong support of the Wellstone-Harkin motion. This motion would allow open Senate debate during the impeachment trial. Mr. Chief Justice, the American people should not be excluded from one of the most important Senate deliberations in United States history.

The result of the debates and discussions over the next days or weeks could require the removal of the President of the United States for the first time in our Nation's 222 year history. In our deliberations, my colleagues and I will contemplate no less than reversing the outcome of an election in which nearly 100 million Americans cast their vote. Such a significant decision, a decision with such profound consequences, should not be reached behind closed doors.

I believe my constituents and all Americans deserve to hear Senate deliberations from Senators—not leakers and speculators and commentators.

From my earliest days as a Baltimore social worker to my tenure as a United States Senator, I have lived by the principle that the public has a right to know and a right to be heard. This principle is no less important when a Presidential Impeachment trial is underway. It is more important than ever.

Now, some of my colleagues have said that these deliberations should be closed because we are jurors and jurors' deliberations are kept secret in a court of law. But let me tell you that this Senate tribunal cannot be compared to a simple court of law. Of course, the law is the foundation for our work in the Senate. But as my colleague from Iowa, Senator HARKIN, noted during the trial, we are more than jurors.

We are representatives of our Nation. We are given responsibilities to deliberate on matters of public importance and vote in the public interest. Never was that more true than in the Senate trial in which we are now engaged.

The U.S. Senate is, ultimately, the public's institution—not ours. It is for them we work and it is to them we owe our continued service. I hope and believe we serve the institution well and that our stewardship gives credit and credence to the wisdom of our Founding Fathers. By keeping our deliberations open, we will do service to the American public we serve, this institution we cherish, and those Founding Fathers we revere.

I absolutely will not support closing the doors to the public and hope that my colleagues will join me in supporting the sunshine motion.

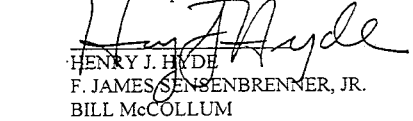
IN THE SENATE OF THE UNITED STATES
Sitting as a Court of Impeachment

In Re	)
	)
Impeachment of	)
President William Jefferson Clinton	)

MOTION AND MEMORANDUM IN SUPPORT OF THE MOTION OF THE UNITED STATES HOUSE OF REPRESENTATIVES FOR THE APPEARANCE OF WITNESSES AT A DEPOSITION AND TO ADMIT EVIDENCE NOT IN THE RECORD

Respectfully submitted,

The United States
House of Representatives



HENRY J. HYDE
F. JAMES SENSENBRENNER, JR.
BILL McCOLLUM
GEORGE W. GEKAS
CHARLES T. CANADY
STEPHEN E. BUYER
ED BRYANT
STEVE CHABOT
BOB BARR
ASA HUTCHINSON
CHRIS CANNON
JAMES E. ROGAN
LINDSEY O. GRAHAM

Managers on the Part of the House

THOMAS E. MOONEY
General Counsel
DAVID P. SCHIPPERS
Chief Investigative Counsel

January 26, 1999

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CATHLEEN A. CLEAVER, Counsel
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BLAINE S. MERRITT, Counsel
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SUSAN BOGART, Investigative Counsel
ROBERT S. HOOVER, Counsel
JOHN C. KOCORAS, Counsel
BERLE S. LITTMAN, Investigator
STEPHEN P. LYNCH, Professional Staff Member
JEFFREY J. PAVLETIC, Investigative Counsel
THOMAS M. SCHIPPERS, Investigative Counsel
ALBERT F. TRACY, Investigator
PETER J. WACKS, Investigator
DIANA L. WOZNICKI, Investigator

IN THE SENATE OF THE UNITED STATES
Sitting as a Court of Impeachment

In Re	)
	)
Impeachment of	)
President William Jefferson Clinton	)

MEMORANDUM IN SUPPORT OF
MOTION OF THE UNITED STATES HOUSE OF REPRESENTATIVES
FOR THE APPEARANCE OF WITNESSES AT A DEPOSITION
AND TO ADMIT EVIDENCE NOT IN THE RECORD

Now comes the United States House of Representatives, by and through its duly authorized Managers, and respectfully submits to the United States Senate its Memorandum in support of its motion for the appearance of witnesses at a deposition and to admit evidence not in the record in connection with the Impeachment Trial of William Jefferson Clinton, President of the United States.

The House requests that subpoenas be authorized and issued by the Senate to the witnesses enumerated in the House's Motion because those witnesses possess information which contradicts the inferences argued by the President from the record during this Impeachment Trial. Individually and collectively, the witnesses will provide information concerning the specific instances in which the President lied under oath, encouraged others to lie under oath, or otherwise obstructed justice as part of a premeditated and calculated scheme to prevent a fellow American citizen from

Webber Wright, U.S. District Court Judge for the Eastern District of Arkansas;

2. the sworn declaration of T. Wesley Holmes, and attachments thereto; and

3. certain telephone records which document conversations between Monica S. Lewinsky and William Jefferson Clinton, including a 56-minute exchange on December 6, 1997.

Additionally, the House petitions the Senate to request the appearance of William Jefferson Clinton, President of the United States, at a deposition, for the purpose of providing testimony related to the Impeachment Trial.

IN THE SENATE OF THE UNITED STATES
Sitting as a Court of Impeachment

In Re	)
	)
Impeachment of	)
President William Jefferson Clinton	)

MOTION OF THE UNITED STATES HOUSE OF REPRESENTATIVES
FOR THE APPEARANCE OF WITNESSES AT A DEPOSITION
AND TO ADMIT EVIDENCE NOT IN THE RECORD

Now comes the United States House of Representatives, by and through its duly authorized Managers, and respectfully submits to the United States Senate its motion for the appearance of witnesses at a deposition and to admit evidence not in the record in connection with the Impeachment Trial of William Jefferson Clinton, President of the United States.

The House moves that the Senate authorize and issue subpoenas for the appearance of the following witnesses at a deposition for the purpose of providing testimony related to the Impeachment Trial:

1. Monica S. Lewinsky;
2. Vernon Jordan; and
3. Sidney Blumenthal.

Further, the House moves that the Senate admit into evidence the following material not currently in the record:

1. the affidavit of Barry Ward, Law Clerk to the Honorable Susan

vindicating her rights in a court of law.

Some of the witnesses that the House seeks to depose are witnesses who are identified with the President. The House believes that even though these witnesses are identified with the President and therefore are subject to the principle set forth in Federal Rule of Evidence 611 governing witnesses identified with an adverse party and Rule 607 permitting any party to attack the credibility of a witness regardless of who calls the witness, these witnesses will, nevertheless, provide evidence and testimony favorable to the case-in-chief and the inferences urged by the House.

Because President Clinton continues to deny that he perjured himself or obstructed justice through his testimony or other actions, and because the President has proposed that the Senate draw inferences from the factual record which support his denials of the charges brought in the Articles of Impeachment being exhibited by the House, obtaining testimony from the witnesses named in the motion, and additionally from the President himself, will greatly assist the Senate in resolving credibility issues, and in its obligation to determine the proper inferences to be drawn from the facts. In turn, these witnesses will enable the Senate to decide whether the President has fulfilled his constitutional

responsibility to take care that the laws be faithfully executed, to honor his oath before the grand jury and, consequently, whether he should be removed from office.

In sum, the testimony of the witnesses will lend greater coherence and understanding to the narrative of events leading to Impeachment, allowing this body to determine the truth. The testimony will demonstrate the gravamen of the House position: namely, that the chief law enforcement officer of the country committed perjury and obstructed justice in a calculated and premeditated manner warranting removal.

Monica Lewinsky

The House respectfully moves that the United States Senate authorize and issue a subpoena for the appearance at a deposition of Monica S. Lewinsky, to give testimony under oath.

Through the testimony of Monica Lewinsky, the House expects to prove, among other things, that:

1. The Senate may accept as true the testimony she gave in a deposition before the Office of Independent Counsel on August 26, 1998, and before the grand jury on August 6 and 20, 1998.
2. The Senate may accept as true the unsworn proffer she submitted to the Office of Independent Counsel on February 1, 1998.

3. The Senate may accept as true the notes of interviews and other unsworn statements taken in connection with the investigation of the Office of Independent Counsel.

4. On November 5, 1997, she met with Vernon Jordan to seek his help regarding employment opportunities in New York.

5. She did not receive much help from Mr. Jordan for over a month in her search for a job in New York.

6. On December 6, 1997, she called the President and he invited her to the White House.

7. That same day, she went to the White House pursuant to the President's invitation, and they discussed her job search. She complained that Mr. Jordan did not seem to be helping her much in her job search. The President told her that he would talk to Mr. Jordan and that he would "get on it."

8. On December 11, 1997, she again met with Mr. Jordan about her job search. He told her to send letters to three of his contacts in New York and to keep him informed of her progress.

9. On December 17, 1997, she was informed by President Clinton that her name had been placed on the witness list in the *Jones* case on December 5.

10. During that conversation on December 17, the President instructed her to contact Betty Currie if she were subpoenaed

in the *Jones* case, and to invoke previously developed cover stories if questioned about her contact with the President (i.e., that she only had contact with the President when she went to the Oval Office Complex to visit Ms. Currie, or to deliver papers to him).

11. During that same conversation on December 17, the President suggested that she could avoid testifying by executing an affidavit in the *Jones* case.

12. She realized that in order to both invoke previously developed cover stories and file an affidavit in the *Jones* case to avoid having to be deposed, such an affidavit would have to contain false information regarding their relationship.

13. On December 18, 1997, she interviewed with two companies in New York City which were recommended by Mr. Jordan, including MacAndrews & Forbes, the parent company of Revlon.

14. On December 19, 1997, she was served with a subpoena to testify and to produce documents and gifts in the *Jones* case.

15. On that same day, she contacted Vernon Jordan about the subpoena. He put her in touch with Francis Carter, a Washington, DC, attorney. She retained the services of Mr. Carter.

16. On December 22, 1997, she met with Mr. Jordan. They discussed the subpoena she received in the *Jones* case and her concerns about the fact that she had engaged in telephone conversations of a sexual nature with the President and had received gifts from him.

17. She met with President Clinton in the Oval Office at about 8:30 a.m. on December 28, 1997, their first meeting alone since December 6, 1997. He gave her certain belated Christmas gifts. She mentioned her concern to the President that the subpoena she received required her to turn over gifts which she had received from the President. She stated at one point that, "[M]aybe I should put the gifts away outside my house somewhere or give them to someone, maybe Betty [Currie]." The President responded, "I don't know," or "Let me think about that."

18. After she left the White House that morning, Ms. Currie called her and stated "I understand you have something to give me, or, "The President said you have something to give me."

19. Understanding that the President had decided that she should give the gifts to Ms. Currie after "thinking about it," she placed many, but not all, of her gifts from the President in a box.

20. She talked with Ms. Currie several times that day (December 28, 1997). During one of those conversations, she learned that Ms. Currie's mother was in the hospital, and that Ms. Currie would stop by her apartment to pick up the gifts before going to the hospital.

21. She went to the grocery store in the basement of her apartment building to pick up a plant and a balloon for Ms. Currie to take to her mother.

22. After Ms. Currie left the White House, Ms. Currie called her from Ms. Currie's cell phone. She knew this because her "caller ID" indicated that a cell phone was being used.

23. Ms. Currie arrived at her apartment at the Watergate. She met Ms. Currie at the door and entered Ms. Currie's car. She gave Ms. Currie the box of gifts and the plant and balloon for Ms. Currie's mother.

24. On December 31, 1997, fearing that Linda Tripp, a former confidante, might be cooperating with the *Jones* attorneys, she met with Vernon Jordan and discussed the matter. She told Mr. Jordan that Linda Tripp may have learned of her relationship with the President through copies of notes at home which she had sent to the President, and Mr. Jordan advised her to "[g]o home and make sure they're not there." She understood his

comments to mean that she should destroy the notes, which were the subject of production in the subpoena she received on December 19, 1998. She did so.

25. On January 5, 1998, she met with Francis Carter to discuss her proposed affidavit in the *Jones* case. Mr. Carter posed questions to her concerning her affidavit and deposition and told her he would have a draft for her to review the next day.

26. That same day, January 5, she called President Clinton to discuss the answers to questions posed by Mr. Carter and to ask if the President would like to review her affidavit before it was signed. He declined, saying he had already seen about 15 others. She understood that to mean that he had seen 15 other affidavits, rather than 15 prior drafts of her affidavit (which did not exist).

27. On January 6, 1998, she picked up the draft affidavit prepared by Mr. Carter.

28. That same day, she called Mr. Jordan to discuss the draft affidavit. She did so because she thought that obtaining Mr. Jordan's approval would be akin to having the affidavit "blessed" by the President. Changes to Mr. Carter's draft were discussed with Mr. Jordan who agreed to them. In particular, Mr. Jordan agreed to the removal of a statement

implying she had been alone with the President. The signed affidavit declared that Ms. Lewinsky had "...never had a sexual relationship with the President."

29. On January 7, 1998, she signed the affidavit, knowing that parts of it were false.

30. On January 8, 1998, she interviewed again with a representative of MacAndrews & Forbes in New York City. She contacted Vernon Jordan thereafter and informed him that the interview went "very poorly."

31. Mr. Jordan called her later that evening and told her "not to worry."

32. She interviewed with Revlon, a subsidiary of MacAndrews & Forbes, on the morning of January 9, 1998, and was informally offered, and she informally accepted, a job offer. She contacted Mr. Jordan with the news.

33. On January 21, 1998, the story of her relationship with the President was made public.

34. She reached an Immunity/Cooperation Agreement with the OIC on July 28, 1998.

Ms. Lewinsky's contact with President Clinton is highly relevant within the context of the President's obstruction of the *Jones* lawsuit. Once she appeared on the witness list in that case,

President Clinton, directly and through his subordinates and agents, sought her help to conceal the nature of their relationship by illegal means. The President meant to garner her cooperation by acting quickly on her request for help in obtaining a job in New York. When the false affidavit he encouraged Ms. Lewinsky to file did not succeed in precluding questions related to Ms. Lewinsky in the *Jones* case, the President obstructed the proceedings by lying in his civil deposition in using the cover story he had urged Ms. Lewinsky to use if she were called to testify personally. Additionally, he injected Ms. Currie into the proceeding by identifying her as the person with knowledge, even for matters about which he, not she, had personal knowledge. He then proceeded to obstruct justice by coaching others, including Ms. Currie, to corroborate his perjured testimony. He then perjured himself before the grand jury.

Ms. Lewinsky's testimony is relevant to resolve the discrepancies in the record and the different inferences drawn by the House and the President. Her live testimony will rebut the following inferences drawn by White House counsel on key issues, among others:

A. That President Clinton did not encourage Ms. Lewinsky to file a false affidavit.

B. That President Clinton did not lie about not having a "sexual affair," "sexual relations," or a "sexual relationship" with Ms. Lewinsky.

C. That President Clinton did not encourage Ms. Lewinsky to conceal any gifts he had given her.

D. That President Clinton did not instruct or encourage Ms. Currie to pick up the gifts he had given Ms. Lewinsky from her personal residence.

E. That President Clinton did not have an "understanding" with Ms. Lewinsky that the two would lie under oath.That President Clinton did not encourage Ms. Lewinsky to file a false affidavit.

In sum, given the almost complete disconnect between Ms. Lewinsky's testimony, offered under grant of immunity that would be lost if she committed perjury, and President Clinton's, and the inferences drawn by the parties from the factual record, Ms. Lewinsky's appearance would resolve the proper inferences surrounding the facts, assisting the Senators in fulfilling their constitutional duty to find the truth.

WHEREFORE, the United States House of Representatives respectfully requests that this Honorable Body issue a Subpoena for the appearance of Monica Lewinsky at a deposition and provide for

the testimony of the witness as requested.

Vernon Jordan

The House respectfully moves that the United States Senate authorize and issue a subpoena for the appearance at a deposition of Vernon Jordan, to give testimony under oath.

Through the testimony of Vernon Jordan, the House expects to prove, among other things, that:

1. He is a close friend and advisor of President Clinton, and a partner in the Washington law firm Akin, Gump, Strauss, Hauer & Feld.
2. On December 19, 1997, Ms. Lewinsky was served with a subpoena in the *Jones* case. She met Mr. Jordan and they rode together to the office of her attorney, Mr. Frank Carter. En route to see Mr. Carter about the submission of an affidavit, she discussed the subpoena, the *Jones* case, and her ongoing job search with him.
3. On December 22, 1997, three days after Ms. Lewinsky had been served a subpoena to testify in the *Jones* case, she contacted him to discuss the subpoena. He, in turn, put her in touch with Francis Carter, a private attorney. Mr. Carter prepared

an affidavit in which Ms. Lewinsky, among other things, denied having a sexual relationship with President Clinton.

4. Although Ms. Lewinsky claimed that he helped her to change the document on January 6 before she signed it, he recalled he only directed her to consult her attorney if she had concerns about its content.

5. The job search for Ms. Lewinsky continued into the New Year. On January 6, 1998, Ms. Lewinsky interviewed with MacAndrews & Forbes, the parent company of Revlon, in New York City. Sensing that her interview went "very poorly," Ms. Lewinsky spoke to him and told him that the interview went very poorly.

6. On or about January 7, the day Ms. Lewinsky signed the false affidavit, President Clinton and he talked about Ms. Lewinsky's job search. In response to his comments that he was still working his contacts, the President responded, "Good."

7. On January 8, 1998, Mr. Jordan then contacted Mr. Perelman, the Chairman and CEO of MacAndrews and Forbes, to "make things happen...if they could happen."

8. Ms. Lewinsky was granted a second interview at MacAndrews and Forbes on January 9, after which she accepted an informal offer to work for Revlon.

9. On January 9, Mr. Jordan notifies Betty Currie that the mission had been accomplished; a job in New York had been procured for Ms. Lewinsky. He asked that she tell this news to the President.

10. Later on January 9, Mr. Jordan himself notified the President of Ms. Lewinsky's New York job offer and the President replied, "Thank you very much."

Mr. Jordan's live testimony will help to prove that President Clinton obstructed justice by encouraging Ms. Lewinsky to file a false affidavit and by helping her to obtain employment in the private sector at a time when she was a witness in the *Jones* case.

According to Ms. Lewinsky, the President informed her on December 17, 1997, that her name had been placed on a witness list for the *Jones* case (he had been notified through his attorney). (Lewinsky GJT 8/6/98, pp. 121-23, H. Doc. 105-311, pp. 841-43)To avoid having to testify, Ms. Lewinsky claimed the President suggested she execute an affidavit (*Id*, p. 123, H. Doc. 105-311, p. 843)

In other words, Mr. Jordan's live testimony can effectively demonstrate that President Clinton knew the contents of her affidavit at least 10 days prior to his own deposition. This

action was consistent with President Clinton's initial desire that Ms. Lewinsky file an affidavit in lieu of testifying, and, as Ms. Lewinsky's grand jury testimony reveals, that she coordinate her story with the President's by denying the existence of a sexual relationship. (*See* Lewinsky GJT 8/6/98, p.234, H. Doc. 105-311, p. 954). Ms. Lewinsky's false affidavit, in turn, permitted the President to lie in response to document requests answered two days before he testified and permitted the President to lie in his deposition without contradiction. President Clinton's manipulation of these events constitutes evidence to support both the perjury and obstruction Articles.

Mr. Jordan can also speak to another charge which helps to sustain the obstruction Article and which President Clinton's counsel disputes vigorously: the effort by the President to secure employment for Ms. Lewinsky in order to garner her cooperation in his efforts to suborn perjury and obstruct justice.

Although Ms. Lewinsky began her job search before December 7, 1997 - the day after President Clinton discovered her name had been placed on the *Jones* witness list - no effort to obtain private employment in New York had been made in earnest prior to the appearance of her name. His efforts to assist her intensified,

however, after the appearance of her name on the *Jones* witness list.

The following time line is illustrative of how Ms. Lewinsky's appearance on a witness list in the *Jones* case drove White House efforts to obtain a job for Ms. Lewinsky. On December 11, 1997, the presiding Judge in the *Jones* case ordered President Clinton to answer certain interrogatories, including whether he had engaged in sexual relations with government employees. Five days later (December 16), his attorneys received a request for production of documents that mentioned Ms. Lewinsky by name. These events triggered the intensified efforts to accommodate Ms. Lewinsky in her job search, consistent with Mr. Jordan's anticipated testimony as set forth in points seven through 12, *supra*.

Mr. Jordan was the primary catalyst in obtaining Ms. Lewinsky's job in New York. It is expected that Mr. Jordan's testimony will lead to the reasonable and logical inference from the evidence that the timing and level of effort devoted to obtaining a desired job for Ms. Lewinsky - especially by powerful men such as Mr. Jordan - was intended to ensure Ms. Lewinsky's gratitude and thereby discourage her from providing any damaging information about her relationship with the President to the *Jones*

attorneys. The live testimony of Mr. Jordan on this issue will therefore help the Senate as it considers the allegations against the President.

WHEREFORE, the United States House of Representatives respectfully requests that this Honorable Body issue a Subpoena for the appearance of Vernon Jordan at a deposition and provide for the testimony of the witness as requested.

Sidney Blumenthal

The House respectfully moves that the United States Senate authorize and issue a subpoena for the appearance at a deposition of Sidney Blumenthal, to give testimony under oath.

Through the testimony of Sidney Blumenthal, the House expects to prove, among other things, that:

1. He is an Assistant to the President.
2. On January 21, 1998, President Clinton told him in the wake of the *Washington Post* story that he had rebuffed Ms. Lewinsky and that she came at the President and made a sexual demand on the President. The President also stated to him that the President hadn't done anything wrong.
3. During this same conversation, President Clinton depicted Ms. Lewinsky as a "stalker." The President stated that Ms.

Lewinsky "threatened" the President, and that she said she would tell people that "they'd had an affair."

4. The President also stated that Ms. Lewinsky was known as a stalker among her peers, that she hated it, and that if she had an affair or said that she had an affair with the President, then she wouldn't be the stalker anymore.

Mr. Blumenthal's live testimony on these points would provide evidence that the President lied to his aides knowing that they may be called to testify before the grand jury. In addition, his testimony proves that President Clinton embellished his previous explanations to the public, his aides, and authorities, by depicting Ms. Lewinsky as a "stalker," thereby attacking her character in an effort to exculpate himself. This evidence is an important component of the obstruction charges set forth in Article II.

WHEREFORE, the United States House of Representatives respectfully requests that this Honorable Body issue a Subpoena for the appearance of Sidney Blumenthal at a deposition and provide for the testimony of the witness as requested.

Sworn Declaration of Barry Ward

The House respectfully moves that the United States Senate

admit into evidence the sworn declaration of Barry Ward, Law Clerk to the Honorable Susan Webber Wright, United States District Judge for the Eastern District of Arkansas.

The sworn declaration of Mr. Ward will prove that:

1. Barry Ward is a law clerk to United States District Judge Susan Webber Wright of the Eastern District of Arkansas. He assisted in the adjudication of *Jones v. Clinton*, which was filed in the Eastern District of Arkansas in 1994.
2. One of the disputed issues during the *Jones* litigation governed the extent to which President Clinton would be required to disclose information about his alleged advances toward or relationships with other women who were either State or Federal employees. The Judge ruled that the request was relevant for purposes of pretrial discovery.
3. Subsequent to this ruling, the President was deposed on January 17, 1998. He was present at the deposition. At one point in the questioning, the President's attorney, Robert Bennett, urged the Judge to preclude inquiries pertaining to alleged "sexual relations" between Monica Lewinsky, a former White House intern, and President Clinton. The basis for Mr. Bennett's argument was that Ms. Lewinsky had executed an

affidavit "saying that there is absolutely no sex of any kind of any manner, shape or form, with President Clinton."

4. Mr. Bennett further represented that President Clinton was "... fully aware of Ms. Lewinsky's affidavit, so I have not told him a single thing he doesn't know ...."

5. President Clinton did not contradict Mr. Bennett's assertion.

6. The questioning continued after the presiding Judge rejected Mr. Bennett's argument.

7. Mr. Bennett later read a portion of the affidavit to President Clinton in which Ms. Lewinsky denied having a "sexual relationship" with him.

8. Mr. Bennett then asked President Clinton whether the statement was true and accurate, to which he replied, "That is absolutely true."

9. On July 28, 1998, the OIC and Ms. Lewinsky reached an Immunity/Cooperation Agreement. On August 6, she admitted before the grand jury that her affidavit was false as to the nature of her relationship with President Clinton.

10. When confronted with Ms. Lewinsky's admission during his grand jury appearance on August 17, President Clinton did not repudiate his January 17 testimony regarding the veracity of the Lewinsky affidavit.

11. Among other justifications, President Clinton stated that he did not correct Mr. Bennett's characterization of the affidavit as true and accurate because he did not pay "any attention" to the colloquy between Mr. Bennett and the presiding Judge.

12. In contrast, a videotape of President Clinton during the January 17 deposition clearly shows him looking directly at Mr. Bennett while he told the presiding Judge that there was "absolutely no sex of any kind in any manner, shape or form, with President Clinton."

13. From his seat at the conference table next to the Judge, he saw President Clinton listening attentively to Mr. Bennett's remarks ("absolutely no sex of any kind ...," etc.) while the exchange between Mr. Bennett and the Judge occurred.

Mr. Ward's declaration would lend even greater credence to the argument that President Clinton lied on this point during his grand jury testimony and obstructed justice by allowing his attorney to utilize a false affidavit in order to cut off a legitimate line of questioning. Mr. Ward's declaration proves that Mr. Ward saw President Clinton listening attentively while the exchange between Mr. Bennett and the presiding Judge occurred. Such testimony would offer greater support for the obstruction charge in Article II.

Sworn Declaration of T. Wesley Holmes and Attachments

The House respectfully moves that the United States Senate admit into evidence the sworn declaration of T. Wesley Holmes, one of the counsels for Paula C. Jones in the case of *Jones v. Clinton*.

Attached to the sworn declaration of T. Wesley Holmes is a photocopy of a subpoena issued to Betty Currie on January 22, 1998, and served on her on January 27, 1998. Also attached is a supplemental witness list filed in the case of *Jones v. Clinton*, containing the name of Betty Currie. His declaration and the photocopy of the subpoena and supplemental witness list will prove that:

1. T. Wesley Holmes was retained as counsel for Paula C. Jones in her suit against William Jefferson Clinton in the case of *Jones v. Clinton*.
2. During his January 17, 1998, deposition in the case of *Jones v. Clinton*, President Clinton made a number of references to Ms. Currie, his Personal Secretary. In effect, the President was suggesting that Ms. Currie, in certain instances, could corroborate his testimony. (OIC Referral, H. Doc. 105-310, nn. 386-89, p. 190)

3. It therefore became clear to Mr. Holmes that Ms. Currie was an important potential witness, and that she should be called to testify in the case.

The resulting subpoena for Ms. Currie, issued on January 22, and the supplemental witness list, become highly relevant in light of this factual background. Counsel for the President has repeatedly argued that Ms. Currie was not a potential witness in the *Jones* case and therefore that the President's January 18, 1998 statements to her were not intended to influence her anticipated testimony.

The subpoena and supplemental witness list undermine the President's claim and establish the House's position. That is, given the President's numerous references to Ms. Currie in his testimony, he knew that the *Jones* attorneys would want to depose her. She was, in fat, subpoenaed, thereby demonstrating that President Clinton's attempts to coach her to be a witness who would corroborate the President's lies

WHEREFORE, the United States House of Representatives respectfully requests that this Honorable Body admit into evidence the sworn declaration of T. Wesley Holmes, and the attachments thereto.

Telephone Records Which Document Certain Conversations Between Monica S. Lewinsky and William Jefferson Clinton

The House respectfully moves that the United States Senate admit into evidence telephone records which document certain conversations between Monica S. Lewinsky and William Jefferson Clinton.

The telephone records will prove that:

1. On December 5, 1997, the attorneys for Paula C. Jones faxed a witness list in the case of *Jones v. Clinton* to President Clinton's attorney.
2. After seeing President Clinton at a Christmas reception on December 5, 1997, Ms. Lewinsky composed a letter to him in which she expressed her disappointment that he was distancing himself from her.
3. The next day, December 6, she went to the White House to deliver the letter and some gifts. Initially, Ms. Lewinsky planned to leave the items with Ms. Currie, who had said earlier that the President was meeting with his lawyers and could not see her.
4. Because Ms. Currie did not know that Ms. Lewinsky was coming to the White House, Ms. Lewinsky sought to gain admittance to drop off the letter and gifts. Ms. Currie sent word that the

President was with another guest, and that Ms. Lewinsky should wait for 40 minutes.

5. Ms. Lewinsky waited in a guard booth with uniformed Secret Service officers. One of them mentioned that Eleanor Mondale was in the White House. Ms. Lewinsky correctly deduced that President Clinton was visiting with Ms. Mondale and not his lawyers. Ms. Lewinsky became "livid," left, placed a telephone call to Betty Currie in which she berated her, and went home.

6. Later that same day, President Clinton called her. While portions of their exchange were testy, the President invited Ms. Lewinsky back to the White House. During their meeting, Ms. Lewinsky mentioned that Mr. Jordan had done nothing to help her with her job search. The President promised he would speak to Mr. Jordan. Ms. Lewinsky characterized the visit as "really nice" and "affectionate." (*Id*)

7. The next day, December 7, Mr. Jordan met with the President in the White House. (*Id*, p. 93)

8. On December 11 Ms. Lewinsky met with Mr. Jordan to discuss her job search. After the meeting Mr. Jordan placed phone calls on Ms. Lewinsky's behalf to corporate officials with Young &

Rubicam, MacAndrews & Forbes, and American Express. (*Id*)

Taken as a whole, these events establish that once President Clinton knew that Ms. Lewinsky was a named witness in the *Jones* litigation, he and his subordinates and agents made a concerted effort to obtain a job for her in New York.

In this context the House believes the 56-minute telephone conversation on December 6 is relevant evidence.

WHEREFORE, the United States House of Representatives respectfully requests that this Honorable Body admit into evidence the telephone records which document certain conversations between Monica S. Lewinsky and William Jefferson Clinton.

Petition for the Request of the Appearance of President Clinton

Additionally, the House petitions the Senate to request the appearance of William Jefferson Clinton, President of the United States, at a deposition, for the purpose of providing testimony related to the Impeachment Trial.

The President is the one person who possesses direct and personal knowledge of the course of all of the events which together constitute the charges of perjury and obstruction of justice being exhibited by the House. His credibility is critical in order for the Senate to resolve different inferences from the factual record in his favor. It is only appropriate that the President appear so that the Senate, sitting as a Court of Impeachment, may compare his responses and credibility against that of the other witnesses who have given testimony and who the House now seeks to depose.

TUESDAY, JANUARY 26, 1999

[From the Congressional Record]

The Senate met at 12:02 p.m. and was called to order by the Chief Justice of the United States.

TRIAL OF WILLIAM JEFFERSON CLINTON, PRESIDENT OF THE UNITED STATES

The CHIEF JUSTICE. The Senate will convene as a Court of Impeachment. The Chaplain will offer a prayer.

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Gracious God, You not only guide our steps, You order our stops for quiet times of prayer. We hear Your words spoken through the psalmist. "Be still and know that I am God; I will be exalted among the nations, I will be exalted in the earth"—Psalm 46:10. Help us absorb the true meaning of these words translating the original Hebrew. You call us to let up, leave off, let go, and truly know that You are God. You are in control. We cannot be still inside until we reaffirm that You are in control of us, this Nation, and this Senate. We exalt You El Shaddai, all-sufficient one; Adonai, our Lord; Jehovah-raah, our Shepherd who guides; Jehovah-rapha, who heals our bodies and our relationships; Jehovah-shammah, God who is here. Strengthen the Senators as they seek to exalt You, as these pages of American history are written during this trial. You bless the Nation that exalts You! Through Him who taught us to seek first Your kingdom and Your righteousness. Amen.

The CHIEF JUSTICE. The Sergeant at Arms will make the proclamation.

The Sergeant at Arms, James W. Ziglar, made proclamation as follows:

Hear ye! Hear ye! Hear ye! All persons are commanded to keep silent, on pain of imprisonment, while the Senate of the United States is sitting for the trial of the articles of impeachment exhibited by the House of Representatives against William Jefferson Clinton, President of the United States.

THE JOURNAL

The CHIEF JUSTICE. If there is no objection, the Journal of proceedings of the trial is approved to date.

The Chair recognizes the majority leader.

Mr. LOTT. Thank you, Mr. Chief Justice.

ORDER OF PROCEDURE

Mr. LOTT. For the information of all Senators, we are now prepared to hear arguments regarding the subpoenaing of witnesses and the taking of their depositions. I understand the House managers will submit the list and begin their argument; the White House counsel will then state their arguments, with the House managers making the final closing statement. This period has been

limited to 4 hours instead of the 6 hours that had been earlier indicated.

I also expect a motion may be offered again to close the session with regard to deliberations by the Senators. I need some further consultation with Senator DASCHLE to confirm that. It could be that we could work it out without having to do the recorded vote. Therefore, votes could occur this evening—probably between 4:30 and 5 o'clock.

As always, we expect to take a break after about an hour and a half in the proceedings, and it may be a little bit longer than usual, so that if Senators are not able to grab a quick bite, they might be able to grab a little something in the cloakroom during that first break. So it might be a little longer than ordinary. I expect that will occur sometime around 1:30, approximately.

Before we begin, since I see that there are still a few Senators not in the Chamber, I suggest the absence of a quorum, Mr. Chief Justice.

The CHIEF JUSTICE. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. LOTT. Mr. Chief Justice, I ask unanimous consent that the order for the quorum call be rescinded.

The CHIEF JUSTICE. Without objection, it is so ordered.

Mr. LOTT. If all Senators, counsel, and managers would return to their desks, I believe we are ready to begin.

Mr. Chief Justice, again, just for the information of all Senators, what happens next is I believe that a manager will be recognized on behalf of the House to present a motion with regard to subpoenaing witnesses and then the presentations will begin first by the House managers and then by the White House counsel and then closed by the House managers to be spread over 4 hours, but that at approximately 1:30 we will take a break so that we can assess how to proceed the remainder of the day and perhaps even get a bite to eat if Senators hadn't had that opportunity. It won't be an extended break but it will be longer than normal.

I believe we are ready to proceed, Mr. Chief Justice.

The CHIEF JUSTICE. The Chair recognizes Mr. Manager BRYANT on behalf of the House managers.

MOTION FOR APPEARANCE OF WITNESSES AND ADMISSION OF EVIDENCE

Mr. Manager BRYANT. Mr. Chief Justice, I have a motion to present.

The CHIEF JUSTICE. The manager will send the motion to the desk. The clerk will read the motion.

The legislative clerk read as follows:

Motion of the United States House of Representatives for the appearance of witnesses at a deposition and to admit evidence not in the Record.

Now comes the United States House of Representatives, by and through its duly authorized Managers, and respectfully submits to the United States Senate its motion for the appearance of witnesses at a deposition and to admit evidence not in the record in connection with the Impeachment Trial of William Jefferson Clinton, President of the United States.

The House moves that the Senate authorize and issue subpoenas for the appearance of the following witnesses at a deposition for the purpose of providing testimony related to the Impeachment Trial:

1. Monica S. Lewinsky;

2. Vernon Jordan; and
3. Sidney Blumenthal.

Further, the House moves that the Senate admit into evidence the following material not currently in the record:

1. the affidavit of Barry Ward, Law Clerk to the Honorable Susan Webber Wright, U.S. District Court Judge for the Eastern District of Arkansas;
2. the sworn declaration of T. Wesley Holmes, and attachments thereto; and
3. certain telephone records which document conversations between Monica S. Lewinsky and William Jefferson Clinton, including a 56-minute exchange on December 6, 1997.

Additionally, the House petitions the Senate to request the appearance of William Jefferson Clinton, President of the United States, at a deposition, for the purpose of providing testimony related to the Impeachment Trial.

The CHIEF JUSTICE. Pursuant to Senate Resolution 16, as modified by the order of January 25, the managers on the part of the House of Representatives and counsel for the President each have 2 hours to present their arguments on this motion.

The Chair recognizes Mr. Manager MCCOLLUM.

Mr. Manager MCCOLLUM. Thank you, Mr. Chief Justice.

Mr. Chief Justice and Members of the Senate, we are here today to argue for the presentation of witnesses, and I want to state at the outset a couple of observations of mine regarding this.

The House managers have always understood the Senate's sense of the rules on these matters, and we don't question that fact. But I think it is important, to set the record clear here today, to say at the outset that we have always believed, and we still do believe, that 10 or 12 witnesses are what we should have and should have been permitted to call to prove our case. We have estimated that this could be done in a matter of 2 weeks at the outside, including all cross-examination. That is what we think the normal order would have been; it is what we think it should have been. But we have been told again and again, and we believe it is true, that if we made such a request it would not be approved. And a few weeks ago we thought—maybe even a few days ago—that we could submit a list of maybe five or six witnesses and there would be a reasonable chance that for deposition they would be approved and maybe two or three of them actually could be presented live in the Chamber.

Now we have been led to believe—and we think it is an accurate assessment—that in order to get a vote to approve the opportunity to take depositions alone, whether or not anyone is called, we cannot submit more than two or three witnesses to you.

That is what we have done today. We have submitted a motion for simply three witnesses: Monica Lewinsky, Vernon Jordan, and Sidney Blumenthal.

The two people who know the most about this are Monica Lewinsky and President William Jefferson Clinton, and while we have not submitted to you today the name of President Clinton in our motion, we strongly urge, if you allow us to have witnesses, which we believe you should, that you, in addition—or even if you don't—on your own call President Clinton here to testify. We think that it is exceedingly important that you have an opportunity, we have an opportunity for you to examine him and these other witnesses to get at the truth of this matter and to end all the speculation that would resolve this matter and let you draw the proper inferences and conclusions.

I will simply say that I am going to make a brief outline of the matter of why we should have witnesses for you, the three we are asking for, and I will be followed in order, so you can get some sequence to this, by Manager BRYANT, who will discuss in detail the reason why we think it is appropriate to call specifically Monica Lewinsky; Manager HUTCHINSON, who will discuss Mr. Jordan as a witness; and Manager ROGAN, who will discuss Mr. Blumenthal.

If our motion is granted—I want to make this very, very clear—at no point will we ask any questions of Monica Lewinsky about her explicit sexual relations with the President, either in deposition or, if we are permitted, on the floor of the Senate. They will not be asked. That, of course, assumes that White House counsel does not enter into that discussion, and we doubt that they would.

Secondly, we do not see why the entire process of deposing and calling all of these witnesses right here live would have to take more than just a very few days, 2, 3, 4, 5, maybe early next week at the latest. There is no reason why it has to be longer than that. We absolutely reject the argument that some were making—and I do not know why they were making it—that somehow, if we have a single witness out here, it is going to mean weeks and weeks of protracted delay in this trial.

That is not so, and certainly not so with the three witnesses we are asking you today to permit us to present.

I also want to address the argument that has been made by some that witnesses should only be permitted if there is new evidence.

Now, the managers believe that we will present to you new evidence with the witnesses that we have asked you to let us depose. Think through this with me for one moment. Under the rules you have set up, if we take depositions, which we are required to do, of every one of these witnesses, at the end of the day when those depositions are completed, all the new evidence that we could imagine certainly will be—from those three witnesses—in those depositions, and the argument will be made, I am sure, that there is no reason to have a live witness out here at all.

That had to be a preconceived notion by somebody who thought of that in the first place. If that is the argument, that should not be the standard. It should be one of the standards but not the standard, not the sole standard. There is a lot more to a witness, and the reason why you need to have a witness out here, than simply new evidence.

In real criminal trials, virtually all witnesses are deposed before they are brought to trial, and then the counsel on each side decide which witnesses they will call. They are called. They are examined. They are cross-examined. And unless a witness is deceased or laid up or there is some other extraordinary reason why that witness isn't there, especially a key witness, then the witness normally is here live.

It is especially true in a case such as this where much of the evidence, not necessarily all of it—there is quite a bit of direct evidence—is circumstantial and requires you to draw, as many finders of fact do all across this country every day, inferences and conclusions that involve the credibility of the witness, that involve the way it is said, that involve inflections and spontaneity of the witness, the exchange of the counsel asking the question and the wit-

ness, and a description and flavor of which you simply can't get without having the person here to observe.

That is what jurors do all the time. I think it is especially important, as well, because there is conflicting testimony.

I do not suppose we have a stand here today, but you have in front of you a credibility of witness instruction I think we passed out. We would like for you to keep it. It is a credibility of witness instruction that is longer than that. I just excerpted a part of it and put it up here on this board. I know you can't all see that but you should have this sheet. If you don't, please ask for it. This is a jury instruction that is given in the District of Columbia. It is something that is given as a part of our Federal system. And it is important, I think, for this particular paragraph, to read it, to understand it, because you wouldn't even write this jury instruction if you didn't expect to have live witnesses:

> In reaching a conclusion as to the credibility of any witness, you may consider any matter that may have a bearing on the subject.

That is part of the instruction.

> You may consider the demeanor and behavior of the witness.

I think that is important. It is the third paragraph you look at, the bottom paragraph.

> You may consider the demeanor and the behavior of the witness on the witness stand; the witness' manner of testifying; whether the witness impresses you as a truthful person; whether the witness impresses you as having an accurate memory and recollection; whether the witness has any motive for not telling the truth; whether the witness had a full opportunity to observe the matters about which he or she has testified; whether the witness has any interest in the outcome of this case or friendship or hostility toward other people concerned with this case.

Demeanor, manner, truthfulness, how the witness impresses you. If you don't have that witness here, and it is a critical witness, there is no way as a trier of fact you can make those judgments fairly. There just isn't any way. We think that it is terribly critical, not only that we are permitted to depose these witnesses, but with respect particularly to Monica Lewinsky and perhaps all three of them, that we be permitted to bring those witnesses here at the end of the day and examine them and let the President's counsel examine them.

The arguments of the President's counsel have been, to some extent, to you and to me—and I have heard it repeated several times—that somehow circumstantial evidence is not that important, that it is somehow inferior to direct evidence. I am not going to pass out a jury instruction on that again. You have already heard us talk about that. The reality is the jury instruction, if we passed one out to you today, would say exactly what we said before: Circumstantial evidence is given the same weight, the same weight as direct evidence. Inferences have to be drawn.

I don't know any case in this country in a criminal matter—or rarely; I should not say "any." I suppose there is a confession that always you get once in a while and you read about it in the paper. But in almost every criminal case, you have to draw inferences; there has to be circumstantial evidence of some sort. There is nothing wrong with that. The President's counsel has said that somehow the nature of the evidence means that you should automatically acquit him. I just don't buy that at all.

What are inferences? Let's put inferences up for a second so you can look at that. Inferences are on this side. This is another jury instruction. I don't know if you have this one, but we will give it to you. This is another one that is given out:

> An inference is a deduction or a conclusion which you . . . as finders of facts—are permitted to draw . . . from the facts which have been established by either direct or circumstantial evidence. In drawing inferences you should exercise your common sense. . . . You are permitted to draw from the facts which you find to be proven, such reasonable inferences as would be justified in light of your experience.

A few days ago, one of the White House counsel, Mr. Kendall, attempted to make you think it was very difficult to prove a crime by circumstantial evidence. You may remember Mr. Kendall told the story about a fellow who came out of his house one morning and he saw his driveway was wet and he immediately thought it must have rained last night. But, Mr. Kendall said, this man noticed right after that that his neighbor's water sprinkler was dripping and he thought, well, maybe the water sprinkler caused it to be wet. And he used that illustration—ended the story right there—of how difficult circumstantial evidence is and how likely you might draw the wrong conclusion from inferences.

Mr. Kendall didn't allow you to proceed with the next commonsense step that shows how powerful circumstantial evidence can be. Let's suppose the man got up in the morning, he walked out of his house, he saw that his driveway was wet, and he thought maybe it had rained. He immediately observed the water sprinkler was dripping. He thought, well, maybe the water sprinkler caused it and he looked down the street then and looked at not only his neighbor's sidewalk where it was wet as well as his, and the driveway, but he looked at his neighbor's. And he looked at several others all around his neighborhood and they were dry.

The obvious conclusion from circumstantial evidence is the neighbor's water sprinkler caused his sidewalk or his driveway to be wet and it didn't rain. It is a kind of a reasonable, commonsense, inferential, circumstantial conclusion you are allowed to draw. You are the finders of fact. I think that that suggestion was wrong.

But this is why we need witnesses. You need to be able to see the temperament; you need to be able to have the background; you need to be able to have the feel or the flavor to draw those inferences properly.

In the impeachment case before you, you have both direct and circumstantial evidence that the President engaged in a pattern of obstruction, perjury, and witness tampering designed to deny the court in the Jones case what Judge Wright had determined Ms. Jones had a right to discover in order to prove her claim. You have to use your common sense to get at this. Seeing, hearing, and observing those live witnesses is important.

If you remember, at the outset of this case, at the outset of these proceedings, I tried to draw your attention to what this was about in a nutshell. Some have said it is a theory of the case. The White House wants to call it speculation. It is not speculation. From all the evidence—especially once you have heard Monica Lewinsky and Vernon Jordan and Sidney Blumenthal, I think adding the flavor that you need to have, adding the body language you need to observe, adding the credibility that you need to establish in this—

I think that is the proper inference and the proper conclusion you need to draw.

What was that nutshell? I won't bore you with going into every detail again, but I want to remind you what the record, we think, shows and that this additional witness presentation would augment and thus be very important. It shows the President had a well-thought-out scheme. He resented the Jones lawsuit. He was alarmed when Monica Lewinsky's name appeared on the witness list and even more alarmed when Judge Wright issued her order signaling the court would hear the evidence of the relationship.

To keep his relationship with Monica Lewinsky from the court once it was apparent to him he was going to have to testify, he knew he would have to lie to the court. To succeed at this, he decided he had to get Monica Lewinsky to file a false affidavit to try to avoid her testifying. He needed to get her a job to make her happy, to make sure she executed the affidavit and then stick with her lies if questioned.

Then the gifts were subpoenaed. He had to have her hide the gifts, the only tangible evidence that could link him to her. She came up with the idea of giving them to Betty Currie and the President seized on that. Who would think to ask Betty? Then he would be free to lie to the court in the deposition. But after this, he realized he had to make sure Betty would lie and cover for him. He got his aides convinced to repeat his lies to the grand jury and the public, and all this worked until the dress showed up. Then he lied to the grand jury to try to cover up and explain away his prior crimes.

The President knowingly, intentionally, and willfully set out on a course of conduct in December 1997 to lie to the Jones court, to hide his relationship, and to encourage others to lie and hide evidence to conceal the relationship with Monica Lewinsky from the court.

That is the straightforward case that we presented. It is there. But it is very important that you recognize this is not speculation but it is supported by the evidence. But it needs to have the witnesses here.

I am not going to go into every one of the articles. I am not going to go over all that again. You have them in front of you. But you know there are four provisions, four different provisions of the perjury article, and there are seven counts in the obstruction article. In addition to the seven counts, we believe you have the right to consider the lies the President made in the Paula Jones civil deposition as a part of his obstruction of justice, as written in the body of that article.

Why do I raise what is there on the table? Well, you can find the President guilty of any one of the perjury or obstruction of justice charges. In our judgment, if you find him guilty of any one, you can convict him and you can remove him from office. We think that is appropriate. We think that you should, that every one of them rises to that level.

I want to make a point to you, too, for example, about the first perjury, about the nature and details of his relationship with Monica Lewinsky. Let's just say for a minute, so you will get this one clear, if I could beg your indulgence, there were a lot of ques-

tions raised out here about particular statements that might be perjurious, some of which may have sounded a little bit more stretched to you than others did. But the body and the gravamen of that is that they are all grand jury perjury about that relationship. Cumulatively, that is what you are voting on. You are not voting on each and every one of these, particularly "the" singular lie that hangs the President of the United States. And there are four—there are three more in addition to that to look at. So, please, look at all of them.

We also strongly believe that each of these constitutes high crimes and misdemeanors. It is very hard for us to conceive that there is a different standard for impeaching the President and impeaching a judge. We know that has been argued to you out here, but it is very hard for us to conceive of this. On the other hand, I am aware that many of you believe, and I am sure some of you at least do—I hope it is not many, but I said many—that no matter whether or not the President is guilty of the perjury and obstruction of justice, everything that is in here in great detail, everything we have told you, that none of that rises to the level of a high crime and misdemeanor and that the President should not be removed from office.

On the other hand, I think that the majority of you do believe that, if the President committed all of this, surely it would rise to the level of high crimes and misdemeanors. How can you leave in office a man who is President of the United States who has so intentionally, through his scheme that he has concocted to deny the court justice, denied information to a person who is trying to plead their case, gone through it systematically and lied again and again and again and then intentionally and calculatingly, lied to the grand jury about it again?

It is very hard to conceive of that. But I also suspect that most of you at the end of the day will question some of these, and as I said earlier, you don't have to conclude that he commited all of them to convict him, certainly not to find him guilty of the charges but somewhere in between. Is it 50 percent of them? Is it seven-eighths of them? How many of them does it take? What is the weight for some of you? Each one of you will be judging this differently.

But in that process, there is no doubt in my mind that you need to go through the process of looking and hearing from these witnesses to make that decision. If you have a doubt, not in your own mind—maybe some of you have no doubt at all that he is guilty of any and all of these crimes, but if you think one of your colleagues does have that doubt at this moment, for gosh sakes, let's let the witnesses come here and let us have the chance to erase that doubt in the way you normally do in a trial.

For a few of the criminal charges under the articles of impeachment, under both of them, it is our judgment that the President's guilt is so clear and convincing and compelling that we don't think any witnesses are needed to be called in deposition or in person.

First, contrary to the impressions that the White House counsel would like to leave you, it should be clear to anybody reading the record that the President committed perjury before the grand jury when he said that he never touched certain body parts of Ms.

Lewinsky, which touching, the President admitted, would clearly be within the definition of sexual relations in the Jones case.

Ms. Lewinsky testified that he touched these parts on a number of different occasions in a manner clearly within the President's understanding of that definition. The record contains testimony from at least six different friends and counselors with whom Ms. Lewinsky spoke and described these details contemporaneously as they occurred.

White House counsel has repeatedly tried to dismiss this absolutely clear perjury by claiming that Ms. Lewinsky's testimony is uncorroborated and, therefore, you couldn't prove perjury to the court. They say again and again and again that it is a "he says-she says" situation.

This is a gross misstatement of the law. Even if there were no corroborating witnesses—and there are in this case—a person could be and would be convicted of perjury before any court in this country based on the evidence that is in this record now. We don't have to bring anything else in here, and we are not planning to do so to prove that.

The law covering grand jury perjury, which has been on the books since 1970, does not require a corroborating witness and does not require corroborating evidence. There are more than 100 people serving in Federal prison today who have been convicted under this 1970 grand jury statute for perjury where it is one person's word against another, several of them for lies about sexual relations.

All you need to convict is to accept that Monica Lewinsky had no motive to lie about this, the President did, and you have to draw the inferences you logically can from the chain of events that are in this record. But even though you don't need any corroborating testimony, there is corroborating testimony. There are the six people—friends and counselors—with whom she talked contemporaneously about this. Again, the White House counselors have tried to persuade you, wrongly, that you should not consider this, that this would not be admissible—these corroborating witnesses—in any courtroom in the country, they say, and that is not true.

There are at least three exceptions to the hearsay rule which would, in all probability, permit those prior consistent statements to come in and corroborate that testimony.

The bottom line is the perjury of the President in this case is as plain as day on the record, and we don't need to call any witnesses on this matter. And we also believe there are a number of other perjuries in that grand jury, that I am not going to go into detail about, that are just as plain on the record. We don't need to call witnesses that he perjured himself when he told the grand jury it was his goal to be truthful in the Jones deposition. That is what he told the grand jury—it was his goal to be truthful.

The record is replete with many lies that he told in that deposition and, in the face of telling the grand jury that his goal was to be truthful, he committed perjury.

Nor do we believe that any witness needs to be called to further establish the President's guilt of the crime of obstruction of justice and witness tampering in the case where he met Betty Currie on the day after his Jones deposition and suggested to her all those

false declaratory statements that we have been over so many times in here.

Betty Currie's testimony in this matter is undisputed on the record. The White House counsel's argument that the President was just refreshing his memory is absurd on its face.

The same is true of the obstruction of justice and perjury charges related to allowing his attorney during the Jones deposition to make false and misleading statements with regard to Ms. Lewinsky's affidavit and then lying about not even paying attention to the attorneys' exchange with the judge on this matter. The record is clear. You watched the videotape on it. Inferences are perfectly appropriate to be drawn from body language. You saw it on the videotape. You saw it. No more witnesses are needed. The President committed these crimes.

On the other hand, we believe we need to bring in witnesses to resolve conflicting testimony to give you a true picture of the President's scheme to lie and conceal evidence for the other obstruction of justice charges and certainly for the last perjury charge. They are more complex. They are more dependent on circumstantial evidence and inferences you logically have to draw. And that is why you need to hear from Monica Lewinsky, Vernon Jordan, and Sidney Blumenthal, to tell you about these things themselves.

When you do, you are just plain going to get a different flavor; you are going to feel the sense of this. We believe you will find at the end of the day, once you have done that, even though you don't need to use this standard, that the President is guilty of the entire scheme we presented to you in every detail beyond a reasonable doubt.

Remember, you don't need to convict him to find him guilty of all of the crimes we have suggested by any stretch of the imagination. You don't need to use the beyond a reasonable doubt standard. That is not required of you. But we can understand why many of you or some of you might.

The reality is that you are in a position where you need to make these determinations, and to make them you need to have the witnesses. In any courtroom where you are going to certainly judge something beyond a reasonable doubt, you need to assess the credibility of the witnesses where you have conflicting testimony.

One point in that regard, too, is, we have heard White House counsel say a number of times that somehow the fact that there is so much conflicting testimony makes our case weaker. That is not so. Again, unless the bad guy admits he is guilty, when you go to trial in a criminal case, you always have conflicting testimony, at least you certainly have the accused denying it, and very, very frequently, most often, you have a lot of other people who are conflicting.

The fact that there is conflict is something for the triers of fact to resolve but, again, resolve by listening to the witnesses, checking their demeanor, watching their body language, determining their credibility, feeling the case-flow, seeing how it fits together, and watching.

I am not going to be the one describing what Monica Lewinsky is going to show you if she comes in here. I am going to tell you, even if we depose her, having had the opportunity to talk with this

intelligent and very impressionable young woman the other day, she will convey this story to you in a way that it cannot be conveyed off a piece of paper. It just cannot be done.

I suppose that is why the White House counselors are so afraid of our calling any witnesses. They don't want you to have the opportunity to get the full flavor if not only you let us take the depositions but you at least let us call her live here on the floor, preferably with our other two witnesses as well.

They know that the written record conceals this. There is no way to lift that out. There is no way for you to see the relationship, how she responds to the questions, how she answers, how she conducts herself in making very apparent what the President's true meaning and intent was.

If you remember, a lot of this is his state of mind. In the not too distant future, Monica Lewinsky is going to be free of the gag order and is going to go out and talk to people freely. She should. At that point in time, she is going to have the public judging her, and they are going to be judging this case, as will history, and I suggest that the public at that point in history as well will be judging you and not judging the Senate well if it doesn't let her come here and testify.

Let me briefly turn to the last thing I want to do. I want to describe the three additional pieces of new evidence we would like admitted in this motion.

First is the affidavit of Barry W. Ward who had been a law clerk to Judge Wright during the consideration of the Jones case. None of this, I think, should be controversial, but we do have it, and I want to cover it briefly. In his affidavit, he attests to the fact that at President Clinton's deposition in the Jones case, he, Mr. Ward, was sitting at the conference table next to Judge Wright; that he was able to observe the colloquy between the judge and Mr. Bennett.

You recall, Mr. Bennett was engaged in this colloquy about the affidavit of Monica Lewinsky. And that is what you saw, the film footage of the President and the questions. Was the President observant? Was he watching? Was he keen? That affidavit goes to that point. It is the testimony of Mr. Ward with regard to the fact that the President was observant.

Secondly, we have a piece of new evidence, and that is the declaration of the Jones attorney, T. Wesley Holmes, and the attached copies of the subpoena in that case, the subpoena in that case to Betty Currie, dated January 22, 1998, along with proof of service, dated January 27, 1998.

Mr. LEAHY addressed the Chair.

The CHIEF JUSTICE. The Chair recognizes the Senator from Vermont.

Mr. LEAHY. Mr. Chief Justice, parliamentary inquiry. It is my understanding that Senate Resolution 16 says——

The CHIEF JUSTICE. The Senator from Vermont is advised it takes unanimous consent to allow a parliamentary inquiry in the proceeding.

Mr. LEAHY. Mr. Chief Justice, I object to the references the manager is making to new information. It is my understanding that from Senate Resolution 16, the material outside the record

may only be presented in connection with a motion to expand the record. This new information—we have skirted it already with the Lewinsky interview this weekend, but now the latest that Mr. Manager MCCOLLUM states, I would say respectfully, expands that record and, indeed, we are not at that point.

The CHIEF JUSTICE. Yes. I think the motion that the managers have made is a motion to authorize the presentation of evidence that is not in the record. And so I think that is a fair comment. I overrule the objection.

Mr. LEAHY. I thank the Chief Justice.

Mr. Manager MCCOLLUM. Thank you, Mr. Chief Justice.

The attachments to Mr. Holmes' declaration is the proof of the subpoena being issued to Betty Currie on January 22, 1998, along with service in the Jones case on January 27, 1998, and a copy of the supplemental witness list, including the name of Betty Currie, which was served on January 23, 1998. And in his declaration, Mr. Holmes explains that Ms. Currie was subpoenaed because of testimony given by President Clinton in his deposition and because of reliable information which the attorneys had received to this effect—that Ms. Currie was an instrumental person in facilitating Monica Lewinsky's meetings with the President and central to their "cover story," as Mr. Holmes refers to it. He explicitly denies that any "Washington Post" article played any part in the decision of the Jones attorneys to subpoena Ms. Currie.

The third and final piece of new evidence that we ask you to take in and accept is a declaration and accompanying documents with regard to a telephone conversation showing that a conversation occurred on December 6 for 56 minutes between the President and Ms. Lewinsky, which we believe is what it shows. Obviously, the phone records show the phone records. And they state what they are. But we suggest to you that that is relevant information because it confirms what we think the testimony in the record otherwise would lead you to believe.

At this point in time, having given you an overview and having given you this amount of new evidence, I want to turn the microphone over and yield to my colleague, Mr. BRYANT, the rest of the time.

The CHIEF JUSTICE. The Chair recognizes Mr. Manager BRYANT.

Mr. Manager BRYANT. Mr. Chief Justice, may I inquire as to our time remaining?

The CHIEF JUSTICE. Just under 90 minutes.

Mr. Manager BRYANT. Thank you, Mr. Chief Justice.

Distinguished Senators, a recent letter from Manager HYDE to Senator DASCHLE stated that it has always been the position of the House managers that a trial with the benefit of relevant witnesses is in the best interest of the Senate and the American people. The defense attorneys for the President, as well as others in this body, have publicly stated that they do not want witnesses.

Through the question-and-answer session that we have just participated in over the last few days, some in this body have made it clear that they would prefer a few sharply focused witnesses limited only to the most relevant evidence. We heard this. And as a

result of our submission this morning, you will see that we have proposed three witnesses.

Now, as background, we have brought this down from some 15 witnesses that we initially thought we would like to call. We eliminated, obviously, many witnesses that we would still like to call. But with respect for this body, and certainly the sensitivity that we feel, we heard that three witnesses would be probably the best situation.

I think from, again, the tone of the questions, the directness of many of the questions, we did get that message clearly. And from these three witnesses we believe we have the broadest coverage of the two articles of impeachment.

Within the obstruction article, there are in essence seven so-called counts, seven instances that we allege. With these three witnesses, we manage to cover six of those seven, with the one that we don't quite cover being the tampering with Betty Currie. As you will note, she is not on that list. But, again, bringing this down to three, we had to eliminate some witnesses we would have preferred to call.

Also, based on what we have read and what we have heard, it is clear that a very few have already determined that even assuming the truth of the articles of impeachment—the perjury and obstruction of justice—they are insufficient to convict this President of high crimes and misdemeanors. Since each of you, as Senators, must consider this matter and vote your own conscience with impartial justice, that is apparently your individual decision, although, with all due respect, I would suggest a premature decision before all the proof and all the arguments are made.

One example of not having heard a complete case is Ms. Lewinsky. She is probably the most relevant witness, that is, aside from the President himself, who so far has indicated through his counsel that he will not testify; and I might add also has not answered the questions that at least some Senators sent to the White House for his answering, based on his attorney's statement that he would be willing to answer questions.

So with that aside, Ms. Lewinsky is probably the most important witness left. Wouldn't you at least want to see and hear from her on this? As the triers of fact, wouldn't you want to observe the demeanor of Ms. Lewinsky and test her credibility—as I say, look into the eyes and test the credibility of these witnesses? Compare her version of the testimony to the contested events. Remember, the President's attorneys, in numerous ways, in their vigorous defense of the President, have challenged Ms. Lewinsky's version of the facts.

I believe the majority of other Senators have not yet reached a final determination, and it is to you now that I make this further proposition. If there is one witness you and the American people honestly do need to hear, it is Ms. Lewinsky. As you probably read in the newspapers, her lawyers don't want her to testify. They are good lawyers, and they don't want to have her out here.

Despite the protestations of the White House and their attorneys during the House hearings that they wanted to hear fact witnesses, we now know absolutely and without a doubt the White House does not want to hear Ms. Lewinsky—does not want you to hear Ms.

Lewinsky, and Ms. Lewinsky, if the truth be known, probably does not want to come in here and testify.

These are not our witnesses. We didn't get this case in a brown envelope. We sort of didn't have any choice in selecting the witnesses. The witnesses are all out there—basically White House employees, friends of the White House, or former employees. These are not going to be our friends if they come in and testify. They are not going to be sympathetic to us, although we can anticipate that they would tell the truth. And that certainly would be our belief with Ms. Lewinsky if she were called.

We believe she understands her responsibility, despite any feelings that she might have about the President or the job that he is doing as President; that she understands the responsibility to tell the truth.

Senators, she does have a story to tell. Given the link that she has, that common thread that she has in most of the charges of these articles of impeachment, I suggest that she should be permitted to testify.

A closure of this case is necessary, and without the direct presentation by Ms. Lewinsky, we all—political and public—would be denied the complete picture that she should be able to give us to better sort this out. As Manager GRAHAM said yesterday, please don't leave us all hanging for the answers we so dearly need.

Is this good, is it bad, or is it ugly? We managers believe that it is bad, ugly, and illegal. We all like to talk about the Constitution, and it is a great document. The opportunity to confront witnesses is present in that Constitution, and it can be argued that this principle of confrontation of witnesses against you should apply to these proceedings. While we realize that confrontational right is one that belongs to the criminal defendant in the Constitution, in this case apparently any right to confront Ms. Lewinsky and other witnesses is being waived by the President and his lawyers since they don't want to call witnesses in these proceedings.

Isn't it time, though, for the rest of us to make that choice that we do want to see and hear some witnesses? Her testimony, in particular, would be extraordinarily enlightening in resolving factual disputes about the very felonies of which we ask you to convict the President of the United States—perjury and obstruction of justice. These particular charges go to the very heart of our co-equal branch of government, the Judiciary. Members of the Senate, in terms of the impact on our judicial system in the search for truth, there is no difference between a person lying, which is perjury, and a person paying another person to lie, which is bribery. The bribery is in the Constitution and the perjury is not specifically mentioned.

In terms of this proposition of proportionality, is the 106th Senate prepared to have as its record of sexual harassment laws that perjury about sex is not illegal? After all, that is what this whole proportionality argument is about, that if it is about sex it is OK to lie. Because Senator Bumpers said that upwards of 80 percent of his divorce cases from his Arkansas practice of law involve lying, that does not legitimize perjury, nor should it provide any authority for this Senate to somehow legitimize perjury if it is just about sex.

We allege that the President, in a reasoned and in a calculated manner, prevented Paula Jones from obtaining truthful testimony and evidence that might have helped her lawsuit. At the time the President attempted his coverup efforts, he, obviously, felt the disclosure of that information in the Paula Jones case would be material and helpful to her. The President not only committed himself to illegal actions but he enlisted others to assist, some knowingly and others perhaps unknowingly.

Ms. Lewinsky is one of these who, interestingly enough, might fit into both categories of knowing and unknowingly at different times. She would be able to share with this Senate the so-called tone and tenor of her conversations with the President. Who else can do that but she or the President?

This tone and tenor and observing her demeanor and listening to her talk about that filing of the affidavit and those things, how the President talked to her and how she read what he said and exactly what he did say, are all very important because, as we know in Washington and so many other places where there is a lot of power and prestige, and so forth, there are actions that can be prompted without even a direct specific order. Things can get done without it being said but just by the tone and tenor, the gestures, the appearance, and so forth, of certain things. Often these direct words, as I said, are not necessary. And Ms. Lewinsky can tell you about some of these occasions.

An appropriate examination—and an appropriate cross-examination, I might add; let's don't limit the White House attorneys here—of Ms. Lewinsky on the factual disputes of the affidavit and their cover story, wouldn't that be nice to hear? The concealment of gifts—what really happened there and the job search—why did she get the job within 48 hours of the affidavit, after months of unsuccess?—wouldn't it be nice to hear Ms. Lewinsky's version of this when it is so important to the overall case of obstruction of justice?

These are just a few examples where the Senate could be helped by her testimony, and it very well could be dispositive. It is even possible that she could help the President in some ways. But I assure you that she is an impressive young lady, and I suspect that she still very much does admire the President and the work that he is doing for this country. Yet she would be a person who in all likelihood would be forthcoming.

If you have not made up your mind and, indeed, if you have further interest in resolving many of the facts here, I do commend Ms. Lewinsky for your consideration. It would be my intent to lead her through direct examination, the perjury charge, as it is alleged with the President, by having her simply affirm those provisions of her written testimony which are the ones that are generally referred to as salacious, without specifically mentioning those words.

On the more complicated obstruction of justice, the pattern of obstruction of justice which does not involve these salacious details and matters, they will be addressed more specifically. It would be my intent for immediate clarification and to dissolve discrepancies and different inferences that have been drawn by House managers and defense counsel for the President to ask her about the December 28 transfer of Ms. Lewinsky's gifts from the President—trans-

fer to Ms. Currie, particularly the cellular telephone call that has been put into issue by the defense team, about her conversation with the President and her offer to allow him to review this false affidavit before she submitted it to her lawyer and eventually to the court, and his comment that he didn't need to review it because he had seen 15 others just like it. Wouldn't you like to know what are we talking about—15 others? Fifteen drafts or 15 other types of affidavits in other cases?

She would also be asked about her job interviews and her discussions with the President about these job interviews over a period of time, which are very important, her discussions with Vernon Jordan, and specifically why she felt that the interview she did with Revlon the day after she signed the affidavit, her impression that it went poorly, whereas we heard—not testimony but statements in the presentation of White House lawyers that, in fact, it didn't go poorly, it went very well, but she felt it went so poorly that she went immediately out to call Vernon Jordan. Why? Why not have her come in and tell us why she did that.

There will, of course, be other matters of record that she can clarify. Being available to the White House defense team, certainly she will be vigorously cross-examined. I am sure that might also clarify other matters.

It is my feeling that a fair and comprehensive examination without interruption could be conducted of Ms. Lewinsky in 2 to 4 hours, and depending on the length of cross-examination by White House attorneys, we may not need any redirect examination.

While defense counsel for the President and others for the President—I heard it so many times, I am not sure exactly who said this so I don't want to attribute it to defense counsel, and maybe they haven't even said it, but there has been word out of the White House that if we call one witness, we might as well settle into a siege here in the Senate; we will be here for months and months and months. I suggest it is an outrageous statement that we will need that amount of time to pursue this case if witnesses are called.

We are confident that, basically, in its best case is an attempt to discourage you from calling witnesses, and in its worst case, unfortunately, is a veiled threat that they will be dilatory and drag this out for months and months if the Senate would so allow.

The House managers are establishing a good-faith effort to cut our witnesses, as I said, down to three people, and to commit to reasonable times of examination with the assurance that we will finish this as quickly as we can and we will hope and perhaps the Senate their defense team.

Witnesses can be called and a fair trial could be accomplished if all concerned would agree. Would the Senate consider requesting the President's defense team to also select three or fewer witnesses in an effort to move this process along? As to the depositions, while they are important, if they are solely for the purpose of discovery, I ask, why would the White House need to discover what Vernon Jordan has to say, what Betty Currie has to say, or Sidney Blumenthal, or John Podesta—any of these witnesses? They would have to take Monica Lewinsky's deposition, but any other discovery deposition, it seems to me, they have complete access to already.

As I close, I want to leave you with some words that have been of some comfort to me, and I think we have all needed some comfort at times during these proceedings. It is a very short quote of the opening remarks of Judiciary Committee Chairman Peter Rodino in 1974. Again, in part, he said:

> We know that the very real security of this Nation lies in the integrity of its institutions and the informed confidence of its people.

He talked about the Nixon hearings.

> We will conduct our deliberations in that spirit. It has been said that our country, troubled by too many crises in recent years, is too tired to consider this one. In the first year of the Republic, Thomas Paine wrote, "Those who expect to reap the blessings of freedom must, like men, undergo the fatigue of supporting it."

Back to Rodino:

> Now for almost 200 years, Americans have undergone the stress of preserving their freedom and the Constitution that protects it. It is now our turn.

Ladies and gentlemen of the Senate, I respectfully ask you to permit the House managers to call these three named witnesses and add this additional evidence.

I thank you. I yield to Mr. Manager HUTCHINSON.

The CHIEF JUSTICE. The Chair recognizes Mr. Manager HUTCHINSON.

Mr. Manager HUTCHINSON. Mr. Chief Justice, ladies and gentlemen of the Senate, my responsibility is to address the testimony of Vernon Jordan and the need to call him as a witness in this case.

Before I go into the details, let me just reflect for a moment on the Senate trial process. I said many days ago that I had confidence in the U.S. Senate, and I thought that at this particular juncture it might be good if I reassure you that I still have confidence in the U.S. Senate. When I think about the trial process that we are going through, I have to compliment you on the fact that you have structured a bipartisan process. I think that is important because you gave this process credibility. So you did the right thing, and I, for one, am pleased with what you were able to accomplish in that endeavor.

Now, whenever you achieve a bipartisan process, you have to make compromises along the way. And the result is a format that is not particularly helpful to the trial managers, the House managers, who wish to call witnesses. We have struggled through that. But notwithstanding the present difficulty, I still compliment you and thank you for what you have done in achieving that bipartisan consensus. I think back to that meeting that I and some other managers had early on with the bipartisan group of Senators from this body—and I now look at some from both sides of the aisle—and I went in there with this high-minded thought that we could make a case for witnesses because of what the other managers have described as the tone and demeanor of witnesses. Well, that was quickly brushed aside by them saying, "No, no, no, we want to hear about what conflicts exist in the testimony; just tell us what the conflicts are because that is a strong case for calling witnesses." Well, that threw me back on my heels. So I went back and, as you know, in the question and answer session I addressed the

question of conflicts. I think we did a good job of outlining the conflicts between various witnesses.

Well, then I was informed that, "We really are not as interested in the conflicts because the conflicts exist in the current transcript. Therefore, really, we want to know what new information and what dynamic these witnesses can add." That threw me a curve. So we looked at this again and we tried to make a case.

I'm going to show you what new dynamics and questions can be asked. Ultimately, when you take the depositions, many of those questions are going to be answered. So you come back full circle to where we started in the beginning—that ultimately I hope witnesses are called so you can evaluate their credibility, determine their demeanor, and assess the truth in this case. I think that is important. I know people talk about me as being a former Federal prosecutor. Actually, at one time, I confess, I represented a defendant in a murder case. This gentleman was charged with murder, and the prosecution in Logan County, Arkansas—near Senator Bumpers' hometown—decided they wanted to handle one of the key witnesses by deposition, as that person was out of State. I objected and objected because I thought that witness ought to be in the courtroom. The judge overruled me and said, "You can go take the deposition and the defense counsel will be there to cross-examine." So we traipsed off to the other State and took this witness' deposition, and she made a lousy witness. I said she would not be believed for anything because of the way she appeared. Well, we brought the transcript back to the courtroom. The prosecution, over my objection, put the transcript into the record and, all of a sudden, that cold transcript was believable—particularly when they had it read by another witness that didn't look anything like the original lady. My client was convicted, but that case was reversed in the Arkansas supreme court because the court said it was important that the jury look into the eyes of the witness, see the demeanor of that witness, and determine the credibility.

So ultimately, we come back to that same point—that somehow you are going to have to resolve the conflicts. I know of only one way to do it. We have tried to be extraordinarily helpful and cooperative with the U.S. Senate. I came in with this idea that we were going to present this case with 14 or 15 witnesses. Clearly, that is off the table. We narrowed it down to three witnesses. That was tough to decide. But we believe that represents the basic heart of the obstruction of justice case and gets to at least six of the seven elements so that you can evaluate them. But we want to assist you, clearly, in getting to the truth but also to bring this matter to a conclusion fairly and as expeditiously as possible.

Let's look to Mr. Vernon Jordan. Should he be called as a witness in this case? His testimony goes to the heart of one of the elements of obstruction of justice, that is, the job search and the false affidavit, and the interconnection between those. I have tried, during my presentation of this case, to present portions of his testimony—excerpts, if you will, from his testimony. But you will see that he has testified five times before the Federal grand jury. I have read all of this. I am not going to ask for a show of hands, but how many of you have read all of this? And so you have had to rely upon a trial by ordeal by lawyers—rather than a trial by witnesses

because I have had to present the testimony of Vernon Jordan in excerpt fashion with limited quotes here and there—as the defense counsel has done. That makes it difficult because the problem is, one, you are hearing it from her, but, second, it is not a story; it is excerpts, and there is no way you can assess the truth because of that.

Look at the times Mr. Jordan has testified before the grand jury: March 3, 1998; March 5, 1998; May 28, and June 9; the last time he ever testified was June 9, 1998. Let's look at what has happened since then, since Mr. Jordan last testified before the grand jury. I believe these charts are in front of you.

On July 22, Ms. Currie testified before the grand jury. So any of the facts we gain from Ms. Currie were not utilized in the last examination of Vernon Jordan.

August 6, what happened on that date? Ms. Lewinsky testified before the grand jury and she revealed some new facts during that time that Mr. Jordan never had an opportunity to explain, respond to, or answer. I will go into that. One of them is about disposing of notes. The second one is about drafting the affidavit. And, of course, by that time the DNA on the dress had been revealed.

Then the next thing that happened was the President's revelation to the Nation that this relationship did exist. Then he testified before the grand jury. All of the facts revealed from those instances were not revealed at the time Vernon Jordan last testified before the grand jury.

Obviously, any lawyer would understand there are naturally questions that arise from each of those incidents that could be posed to Mr. Jordan. Why has that not been done? Quite frankly, I have talked to, as I mentioned the other day, the attorney for Mr. Jordan. I have not talked to Mr. Jordan personally. I think that clearly the Senate does not want us to do that until we get past this next hurdle. But those are the things that need to be resolved.

Let me address briefly three areas of conflicts in testimony between Mr. Jordan and Ms. Lewinsky that point up other areas of questioning that would be appropriate and he should have the opportunity to explain.

I have been accused of being harsh to Mr. Jordan, and I don't mean to be that way. There have been certain things that have been stated by witnesses in this case that ought to be explained, that ought to be asked of Mr. Jordan. But we need to have good answers to these questions. We need to know those answers.

The first conflict—I will get to that—is between Mr. Jordan's testimony and Ms. Lewinsky's testimony about whether Mr. Jordan knew the true nature of the relationship with the President.

In Mr. Jordan's testimony of May 28, he was asked a question: "You're saying no one to your recollection ever suggested or alleged a sexual relationship prior to the 18th of January between Monica Lewinsky and the President?" The answer: "That is correct."

That was on May 28. Ms. Lewinsky was asked the same series of questions months later—in August of 1998—and she testified, "And I remarked that I really didn't look at him as the President" that, "I saw him more as a man and reacted to him more as a man and got angry at him like a man and just a regular person. Mr.

Jordan asked me what I got angry at the President about. So I told him when he doesn't call me enough or see me enough."

Another statement:

> And so after we had the conversation I was just talking about with Mr. Jordan, he said to me, "Well, you know what your problem is," and I said, "What?" He said, "Don't deny it," and he said, "You're in love. That's what your problem is."

This is Monica Lewinsky referring to what Mr. Jordan had said.

So clearly those are relevant questions that need to be readdressed to Mr. Jordan because they were raised by Ms. Lewinsky in subsequent testimony; they have never been asked to him in that fashion.

There is a conflict in the testimony between Mr. Jordan and Ms. Lewinsky about whether the subpoena was discussed at the December 22 meeting. Mr. Jordan testified in March that "we did not talk about the subpoena. She wanted to know about her job. That was the purpose of her coming." And the question was: "Anything beyond that?" The answer was: "No."

And that is March 6, 1998. Ms. Lewinsky testified to the contrary.

Let's turn our attention then to December 22, which is the day she met with Frank Carter: "And I think you said you were going to meet with Mr. Jordan." Answer: "So I came to see Mr. Jordan earlier, and I also wanted to find out if he had in fact told the President that I had been subpoenaed."

That was her testimony which is in direct conflict—that the subpoena was discussed on the same day that she went to see Mr. Carter about the representation.

Where is the relevance in this?

If you recall, Mr. Jordan said it didn't take an Einstein to figure out that, whenever you combine whenever she got the subpoena, it changed the circumstances.

Here you have three problems. You have a job search, you have a witness in court, and if you combine that with the knowledge of a relationship, those are three dynamite issues that should cause alarm—not just one change of circumstances but it elevates it to a higher level of danger because of the correlation between each of those three separate facts, each of these conflicts. The testimony of Monica Lewinsky goes to those key fundamental issues, and Mr. Jordan has never been asked sufficiently about those areas.

The third conflict—this is key—is the testimony of Monica Lewinsky. Mr. Jordan testified that he never talked to Ms. Lewinsky about Linda Tripp. That is his March 5, 1998, testimony. But Ms. Lewinsky testifies in her August 6 testimony about a meeting with Mr. Jordan on December 31.

This is the third exhibit. I will read that:

> And I met Mr. Jordan for breakfast on . . . the morning of [December] 31st, at the Park Hyatt Hotel. And in the course of the conversation I told him that I had had this friend, Linda Tripp . . . and I was a little bit concerned because she had spent the night at my home a few times and I thought—I told Mr. Jordan, I said, well, maybe she's heard some—you know—I mean, maybe she saw some notes lying around. And Mr. Jordan said, "Notes from the President to you?" And I said, "No, notes from me to the President." And he said, "Go home and make sure they're not there."

This is Ms. Lewinsky's testimony of August 6 before the grand jury.

And before anything is said, I am not accusing anyone of anything, but let me tell you, it would be significant if Mr. Jordan is asked a question if that is a true statement and he says yes. It is significant to the case. If he says no, that is significant because there is a clear conflict in the testimony of Ms. Lewinsky. And her testimony goes to the heart of the issue. If he says, "I don't remember," which is a third alternative—by the way, I hate giving these prospective witnesses all my questions—but if he says, "I don't remember," that does not put the issue in dispute with Ms. Lewinsky and establishes really her recollection of the incident.

So I could go through more, I could go through more conflict with Ms. Lewinsky about whether Mr. Jordan saw the unsigned draft copy of her affidavit, a key issue in this case. Ms. Lewinsky testifies one way. Mr. Jordan did not have the benefit of Ms. Lewinsky's testimony when he was asked earlier in the grand jury. So that needs to be addressed with him.

There is a conflict with Ms. Lewinsky on whether they discussed the contents of the affidavit—not just whether they saw the signed affidavit but whether the contents were discussed. The question to Mr. Jordan was: "Did you ever discuss with Ms. Lewinsky what she was going to include in the affidavit?" Answer: "I was not Ms. Lewinsky's lawyer. The answer to that is no."

But he goes on and elaborates on that. Ms. Lewinsky testified that she and Jordan did have a conversation about deleting a certain sentence in the affidavit and reworking that.

That is what I just covered on the contents of the affidavit.

Let me just go to one other on the conflict where the affidavit was discussed at their last meeting. Mr. Jordan testified in March that she came into the office:

> She gave me a tie. I said, "Monica, I am really busy, thank you." And she thanked me, and she is gone.

"Any subsequent conversation?" The answer: "No."

Ms. Lewinsky's testimony is:

> I stopped in to see him for five minutes to thank him for giving me the job, and I gave him a tie.

She further testified:

> I believe I showed him a copy of the affidavit.

Clear conflict, very important, once again showing a connection between the job, the false affidavit, and, of course, if you tie in the other aspect about the relationship, it gets very significant and something that needs to be further inquired about.

So there are some of the conflicts between the testimony and an area that we need to inquire of Mr. Jordan about.

The notes to the President that Ms. Lewinsky said she had a conversation with him about, that has never been addressed to Mr. Jordan whatsoever.

The December 19 meeting we need to explore more with Mr. Jordan. This is the meeting when Ms. Lewinsky was subpoenaed. She called Mr. Jordan. He says, "Come over." She goes over there to meet with Mr. Jordan, and during that meeting, according to the telephone logs, Mr. Jordan received a call from the President of the United States. Mr. Jordan has testified that he told the President that Ms. Lewinsky got subpoenaed.

That appears to be exactly during the meeting—the conversation he is having with Ms. Lewinsky.

I think appropriate questions to Mr. Jordan are: Did you excuse Ms. Lewinsky from the meeting? Did you have a private conversation with the President about the subject that you were talking to Ms. Lewinsky about? And when you renewed your conversation with Ms. Lewinsky, did you in fact tell her about your conversation with the President? If Ms. Lewinsky was not told about that conversation, I think there is some significance there, that things were going on that people were compartmentalizing and not sharing with the other interested parties, and I think that is significant and that needs to be explored. His involvement with reviewing the affidavit needs to be developed, and the conflicts, his knowledge of the nature of the relationship with Ms. Lewinsky.

So all of these need to be further explored. There are a number of unanswered questions.

One final area. I obviously have a number, but I don't want to belabor this point. There was testimony I mentioned about Mr. Isikoff and how Betty Currie felt compelled to see Mr. Jordan about Mr. Isikoff inquiring about the courier records on the gifts from Ms. Lewinsky to the President. There is some indication that that information might have been shared with Mr. Frank Carter because Ms. Lewinsky testified that she received a page from Mr. Carter, her attorney, about the Isikoff call, the Isikoff request. How did that information get to Mr. Carter? I think there are some legitimate questions that should be asked.

So we would respectfully ask the Senate to permit us to call Mr. Jordan as a witness, to depose him. But, further, we hope we will be able to call him so that you can evaluate the conflicts that I am sure exist now, that very likely will exist later on as well. The story needs to be told. The truth should be determined. Justice should be accomplished. That is done not through lawyers up here talking, it is not done through transcripts but through witnesses. Edmund Burke said that to fail to hear the evidence is to fail to hear the cause. I know that you have transcripts, but I would contend to you that to fail to hear these witnesses is in essence to fail to hear the cause.

RECESS

Mr. LOTT. Mr. Chief Justice, could I inquire about the balance of the time remaining for the House managers?

The CHIEF JUSTICE. Yes. The managers have 52 minutes remaining.

Mr. LOTT. Do they intend to use more of their time now?

Well, Mr. Chief Justice, I ask unanimous consent that we take a 30-minute break at this point.

There being no objection, at 1:22 p.m., the Senate recessed until 1:59 p.m.; whereupon, the Senate reassembled when called to order by the Chief Justice.

The CHIEF JUSTICE. The Chair recognizes the majority leader.

UNANIMOUS-CONSENT AGREEMENT

Mr. LOTT. Mr. Chief Justice, I have a unanimous consent request to propound. We have discussed this with Senator DASCHLE and it has been cleared.

I ask unanimous consent that following the conclusion of the arguments by the managers and the White House counsel today on the motion to subpoena witnesses, it be in order at that point only for Senator HARKIN or Senator WELLSTONE to make a motion to open that debate pursuant to his motion timely filed, and that the Senate proceed immediately to the vote, pursuant to the impeachment rules.

I further ask that following that vote, if defeated, it be in order to move to close the session for deliberations on the motion to subpoena witnesses, as provided under the impeachment rules of the Senate, and proceed to an immediate vote.

If we have any change in either one of these, certainly we would have to ask for consent on that and would notify Members to that effect.

I further ask that if the Senate votes to proceed to a closed session, those deliberations be limited to 3 hours equally divided between the two leaders, notwithstanding the 5-minute allocation of time under the impeachment rule.

I further ask unanimous consent that when the Senate concludes its business today, it stand in adjournment until 1 p.m. on Wednesday, January 27.

Finally, I ask unanimous consent that pursuant to S. Res. 16, the votes occur immediately upon convening on Wednesday, first on the motion to dismiss and, if defeated, the motion to subpoena witnesses without intervening action or debate.

The CHIEF JUSTICE. In the absence of objection, it is so ordered.

Mr. LOTT. I believe, Mr. Chief Justice, we are ready to proceed with White House counsel.

The CHIEF JUSTICE. The Chair recognizes Mr. Counsel Kendall.

Mr. Manager ROGAN. Mr. Chief Justice, we reserve our time.

The CHIEF JUSTICE. Very well.

Mr. Kendall.

You are going to use it now? You have 52 minutes remaining. The Chair recognizes Mr. Manager ROGAN.

Mr. Manager ROGAN. Thank you, Mr. Chief Justice, Members of the Senate. When I was a trial judge back in California, there was something I had to do in every single case, whether it was a criminal or civil case, and that was to advise the triers of fact—in that particular case, the jury—that what the lawyers said was not evidence. This is a universal warning that is given in courtrooms throughout the country to the triers of fact because the law prefers that those people who have to make the determination as to what the facts are make that determination based not only on interpretation of the evidence but based upon what the evidence ac-

tually is. And that has been the underpinning of our argument before this body from the very first day as to why witnesses are needed—not to accommodate us but for the Senate to be able to make the ultimate conclusion as to what is the truth.

A perfect example of why the evidence should come from witnesses rather than lawyers can be seen from the fact that throughout these proceedings lawyers on both sides have tried to characterize what is the evidence and tried to characterize the interpretation that this body should adopt.

I am reminded when we were before the Judiciary Committee, just before we voted articles of impeachment, White House counsel suggested to our committee, as they do before this body, that the President's state of mind during his various statements under oath was he intended to mislead people but to be truthful. They say the President didn't lie. Instead, they say he carefully crafted these hypertechnical definitions to protect himself from any perjury charge.

We believe the evidence will show that by so doing, Paula Jones was denied the information a Federal judge said she was entitled to have and, thereby, perjury and obstruction of justice lie.

Before the Judiciary Committee, Mr. Ruff reaffirmed this was the President's strategy. This is what Mr. Ruff told our committee:

Question to Mr. Ruff:

I do want to make sure I understand your position. From the beginning, the President has taken the position that he never lied to the American people or lied while giving testimony under oath. Essentially claims he simply misled [them] with a different definition, and he was sending the same message both to the American people and the court.

Answer by Mr. Ruff:

I think that is fair, Congressman. Yes.

Question:

And he did that intentionally, because in his own mind he drew a distinction between the technical definition of "sexual relations" and the definition of "improper relationship," or something along those lines, which is how he now characterizes his relationship with Monica Lewinsky?

Answer by Mr. Ruff:

Yes, I think that's correct.

Question:

You suggested earlier in your testimony this distinction is one he has drawn since the Jones deposition. My notes indicate you said the definitions are one that he held in his mind in January and in August and he has so testified.

Answer by Mr. Ruff:

Yes.

Question:

In determining whether the President either perjured himself or lied under oath in this matter, you are asking the committee to look to his state of mind from the beginning of this whole episode and make that determination?

Answer:

Yes.

Members of this body, we suggest the evidence has shown, and the evidence will further show by the calling of the witnesses that we propose, that the President denied under oath specific facts that were relevant to the case, relevant to the Jones case, relevant to the perjury and obstruction investigation by the grand jury, and in so doing, among the other lies that my colleagues have pointed out, we will show that he lied to his aides.

This is important, because he, the President, admitted he knew that his aides were potential witnesses in a criminal investigation before the grand jury. This is the portion of the grand jury transcript where the President testified about his conversations with key aides once the Monica Lewinsky story became public.

Question to the President:

Did you deny it to them or not, Mr. President?

A. . . . I did not want to mislead my friends, but I wanted to find language where I could say that. I also, frankly, did not want to turn any of them into witnesses, because I—and, sure enough, they all became witnesses.

Q. Well, you knew they might be witnesses, didn't you?

A. And so I said to them things that were true about this relationship. That I used—in the language I used, I said, there's nothing going on between us. That was true. I said, I have not had sex with her as I defined it. That was true. And did I hope that I would never have to be here on this day giving this testimony? Of course. But I also didn't want to do anything to complicate this matter further. So, I said things that were true. . . .

The President's position is they were misleading, but they were true. No lies. That is precisely what Mr. Ruff told the Judiciary Committee, and that is the position that White House counsel takes before this body.

Remember, the grand jury was conducting a criminal investigation. They were seeking evidence of possible perjury and obstruction of justice, and the White House contends before this body that the President did nothing to obstruct their investigation. The evidence shows that he did. One of those witnesses who will demonstrate that to this body is the President's own aide, Sidney Blumenthal. That is why we request this body to allow Mr. Blumenthal to be deposed. Further, we hope that you will allow him the opportunity to testify before you so that you can gauge his credibility and his demeanor as he presents the answers that we expect he will give.

Mr. Blumenthal's testimony puts him in direct conflict with the claims of the President and shatters the myth of the President's truthful but misleading answers given under oath.

Just for a quick way of background, Mr. Blumenthal, on January 21, 1998, was an assistant to the President. That was the day the Monica Lewinsky story broke in the national press through the Washington Post. That story broke in the morning.

Later the same day, Mr. Blumenthal met both with the First Lady and then with the President to discuss these news revelations. One month later, Mr. Blumenthal was called to testify before the grand jury. His testimony was not particularly helpful during that time because, through most of the questioning that involved conversations that he had at the White House, Mr. Blumenthal claimed executive privilege.

That issue was apparently litigated, and then he returned in June to testify before the grand jury twice, on June 4 and on June 25, 1998.

When Mr. Blumenthal was free to share his recollections of the events, this is how Mr. Blumenthal characterized his meetings with President and Mrs. Clinton before the grand jury. It is interesting to note, by the way, that there was a dual lie going on here from the President. The President was lying to his wife, who could never be called as a witness against him, but he was also lying to his aides whom he admitted could be called.

This is from Mr. Blumenthal's testimony on June 4.

> The First Lady said that she was distressed that the President was being attacked, in her view, for political motives, for his ministry of a troubled person. She said that the President ministers to troubled people all the time . . . and he does so out of religious conviction and personal temperament. . . .
>
> And the First Lady said he had done this dozens if not hundreds of times with people, the President came from a broken home and this was very hard to prevent him from trying to minister to these troubled people.
>
> So I related that conversation to the President. . . . And I said to him that I understand that you . . . want to minister to troubled people, that you feel compassionate, but that part of the problem with troubled people is that they're . . . troubled. . . .
>
> I said, "However, you're President and these troubled people can just get you in incredible messes . . . you have to cut yourself off from them."
>
> And he said, [meaning the President, he said,] "It's very difficult for me to do that, given how I am. I want to help people."

Then Mr. Blumenthal testified that the President said Dick Morris suggested that the President go on television and admit in a national address whatever he may have done wrong.

Once again Mr. Blumenthal testified:

> And I said to the President, "What have you done wrong?" And he said, "Nothing. I haven't done anything wrong." [And] I said, "Well, then, that's one of the stupidest ideas I've ever heard. Why would you do that if you've done nothing wrong?"
>
> And it was at that point that he gave his account of what happened to me and he said that Monica—and it came very fast. He said, "Monica Lewinsky came at me and made a sexual demand on me." He rebuffed her. He said, "I've gone down that road before, I've caused pain for a lot of people and I'm not going to do that again."
>
> She threatened him. She said that she would tell people they'd had an affair, that she was known as the stalker among her peers, and that she hated it and if she had an affair or said she had an affair then she wouldn't be the stalker anymore.
>
> And I repeated to the President that he really needed never to be near people who were troubled like this, that it was just—he needed not to be near troubled people like this. And I said, "You need to find some sure footing here, some solid ground."
>
> And he said, "I feel like a character in a novel. I feel like somebody who is surrounded by an oppressive force that is creating a lie about me and I can't get the truth out. I feel like the character in the novel Darkness at Noon."
>
> And I said to him, I said, "When this happened with Monica Lewinsky, were you alone?" He said, "Well, I was within eyesight or earshot of someone."
>
> I said, "You know, there are press reports that you made phone calls to her and that there's voice mail. Did you make phone calls to her?"
>
> He said that he remembered calling her when Betty Currie's brother died and that he left a message on her voice machine that Betty's brother had died and he said she was close to Betty and had been very kind to Betty. And that's what he recalled.

And then in his June 24 deposition, Mr. Blumenthal expanded on this thinking. He was asked the question:

> In your conversation with the President when he stated that Monica Lewinsky threatened to disclose an affair, or fabricate an affair in a public disclosure, did you understand him to be saying that if the President didn't concede or didn't agree to have some [type] of sexual contact with her, that she would report an affair?

A. My understanding was that she demanded to have sexual relations. He rejected her. And she said that—this is—I recall him saying—that, "They called me the Stalker." That's what Lewinsky said. "And if I can say we had an affair, then they won't call me that," something like that.

Q. Now, you previously characterized Ms. Lewinsky's comments to the President as a threat, if you will?

A. Right, yeah, I would interpret—that's my understanding.

Then Mr. Blumenthal told the grand jury about the impact the President's emphatic denials had upon his state of mind—the mind of a potential grand jury witness.

Q. In response to my question how you responded to the President's story about a threat or discussion about a threat from Ms. Lewinsky, you mentioned you didn't recall specifically. Do you recall generally the nature of your response to the President?

Answer by Mr. Blumenthal:

I was generally sympathetic to the President. And I certainly believed his story. It was a very heartfelt story, he was pouring out his heart, and I believed him. . . .

Q. Did the President explain to you what Monica Lewinsky's trouble was that he was helping?

A. No.

Q. And you never asked him?

A. No.

Q. Did anyone else, including the First Lady, tell you what Monica Lewinsky's trouble was that the President was ministering about?

A. No. . . .

Q. What did you understand the President to mean by, he had done nothing wrong?

A. My understanding was that the accusation against him, which appeared in the press that day, was false, that he had not done anything wrong.

Q. That he had not had any sort of sexual relationship?

A. He had not had a sexual relationship with her and had not sought to obstruct justice or suborn perjury.

Mr. Blumenthal then went on to say he then asked the President about some of these reports that there were phone calls between him and Monica Lewinsky.

Q. Did the President say anything to you about telephone calls with Monica Lewinsky?

A. As I testified, I had said to him that there were reports that his voice was on her voice mail, her tape machine at home to take message—message machine. And he said to me that he could recall that after Betty's brother died he may have called Monica because Monica had been very close to Betty. And Betty didn't have a way of relating to her that her brother had died, so that he had called and left a message that Betty's brother died.

Q. Did he suggest to you that that was the only call he had ever made to Monica Lewinsky?

A. That's the only one he told me about.

Q. Did you ask him if there were any more calls than that?

A. He said that's the only one he could remember.

Well, we now know certainly from White House logs that "the only one the President remembered" isn't quite true, that in fact I believe it was over 50 telephone conversations between the President and Monica Lewinsky. And it begs the question: Why was the President, on the day this story broke, pulling his aides in to relay information that the President knew was patently false when he knew that they were potential witnesses before the grand jury?

Now, it is important to remember that this testimony from Mr. Blumenthal was given 1 month before Monica Lewinsky decided to opt to cooperate with the Office of Independent Counsel. Thus, these questions were asked of him in a vacuum without the benefit

of Ms. Lewinsky's extensive testimony, as well as the President's own grand jury testimony. And the House managers agree that these and other areas need to be more fully explored with the gentleman under oath in light of the later revelations that occurred surrounding this case.

Now, we know a couple of things. We know that the Monica Lewinsky story broke on January 21. We know that the President spoke to Sidney Blumenthal the very same day. We know that the President said he knew his aides could be potential witnesses before the grand jury. And we also know that Mr. Blumenthal was called three times before the grand jury—once in February, twice in June.

There is an important question that was never asked Mr. Blumenthal during his testimony. It could not have been asked because at the time he testified, the revelation that the President shared with America in August and Monica Lewinsky's revelation had not yet been aired. If the President knew that Mr. Blumenthal was going to be a witness, a potential witness before the grand jury, if 6 months after this story broke the President presumably knew that his aide had gone down, not once but twice, to the grand jury, I would like to know from Mr. Blumenthal: Did the President ever come up to you and say something to you? Did he ever say to you: Do you remember that story I told you back in January? Well, now that you're actually going to be a witness, I know that you're going down to testify before the grand jury, I don't want you to give the grand jury a false impression. I don't want you to give false information to the grand jury. I don't want you to be a cog in the wheel of an obstruction of giving the grand jury the opportunity to hear the truth. I need to recant for you what I told you.

There is no evidence of that. We would like to find that out. The only way we can do that is by deposing Mr. Blumenthal and hopefully bringing him in and sharing that information with this body.

Another area we would like to inquire about is the area of a potential plan to destroy Monica Lewinsky if she ever decided to cooperate with law enforcement authorities. Mr. Blumenthal told the grand jury that, following the Monica Lewinsky news revelations, White House aides held twice-a-day staff briefings, at 8:30 in the morning and at 6:45 in the evening, every day to discuss, among other topics, the media impact of the Lewinsky scandal and how to deal with it in the press.

Mr. Blumenthal testified that the primary purpose of these meetings was to discuss press strategy.

In making his presentation to the Judiciary Committee last month, chief investigative counsel David Schippers related some of the quotes in the press following the Lewinsky story. I want to read a few paragraphs from Mr. Schippers' presentation:

> Worst of all, in order to win, it was necessary to convince the public, and hopefully, those grand jurors who read the newspapers, that Monica Lewinsky was unworthy of belief. If the account given by Monica to Linda Tripp was believed, then there would be a tawdry affair in and near the oval office. Moreover, the President's own perjury and that of Monica Lewinsky would surface. How do you do this? Congressman GRAHAM showed you. You employ the full power and credibility of the White House and the press corps of the White House to destroy the witness.

Mr. Schippers then quoted from several news sources. Now, this is just a few days after the President told Mr. Blumenthal that Monica was known as "the stalker."

> Inside the White House, the debate goes on about the best way to destroy "that woman" as President Clinton called Monica Lewinsky. Should they paint her as a friendly fanaticist or as a malicious stalker?

Again, January 30:

> It's always very easy to take a mirror's eye view of this thing, look at this thing from a completely different direction and take the same evidence and posit a totally innocent relationship in which the President was a victim of someone, rather like the woman who followed David Letterman around.

From another source:

> One White House aide called reporters to offer information about Monica Lewinsky's past, her weight problem, and what the aide said was her nickname "the stalker."

Just hours after the story broke, one White House source made unsolicited calls offering that Lewinsky was the troubled product of divorced parents.

And the reference goes on and on. You can find the complete reference in the committee report.

Now the question is, Was this a mere coincidence that the President's false statements to Mr. Blumenthal about Monica Lewinsky being a "stalker" quickly found their way into press accounts, even though those accounts are attributed by the press to sources inside the White House? The answer to the question is, yes, it is a coincidence, according to White House counsel. And we heard that from them just 3 days ago. Mr. Ruff said in his presentation, and I am quoting:

> The White House, the President, the President's agents, the President's spokespersons, no one has ever trashed, threatened, maligned, or done anything else to Monica Lewinsky. No one.

Mr. Blumenthal needs to be questioned now under the light of the facts as we now know them. All we have from Mr. Blumenthal are the facts as he testified before the revelations saw the light of day, and he needs to be questioned for the benefit of those who must make a determination of credibility and the determination of guilt or innocence. This is the reason we have included Mr. Blumenthal on our proposed list. He is just one example of several aides whose testimony is already before you in the record. But we believe it would be beneficial not only for the body to hear him but certainly to question him in light of the revelations that occurred following his grand jury testimony.

Mr. Chief Justice, with that, we reserve the balance of our time.

The CHIEF JUSTICE. Very well. The Chair recognizes Mr. Counsel Kendall for the White House.

Mr. Counsel KENDALL. Mr. Chief Justice, ladies and gentleman of the Senate, House managers, the purpose of the managers' motion, and what I am going to address, is whether you need to add any evidence to the record before you. And that is all I am going to address. Now, I am tempted—it is like waving a red flag at the bull—to take on the substantive arguments that have been presented here as to why the President is guilty. I am going to refrain from doing that, but my refraining from doing that is not because

I agree with them but that we have already addressed them. I think here that the proper procedure is to just address the need for new evidence to add to the record before you.

The managers' case is in no way—no way—harmed by being unable to call witnesses at this point. The independent counsel conducted a wide-ranging investigation. It was intense. It was comprehensive of every conceivable allegation against the President after the Lewinsky publicity erupted on January 21, 1998. In the record of publicly available materials, which the Senate has asked the House managers to certify, the actual number of pages is somewhat understated because, as I mentioned before, frequently four or five pages of transcript are reproduced on a single page of the bound. But, in fact, there are over 10,000 pages of grand jury testimony, over 800 pages of other testimony such as depositions, 3,400 pages of documentary evidence, 1,800 pages of audio transcripts, and 800-some pages of FBI interviews.

The Office of Independent Counsel has an unlimited budget with unlimited investigative resources, ranging from the FBI to private investigators. Its agents interviewed people all over the country, used several different grand juries, conducted hundreds of interviews, even called people back from abroad. If the OIC could have turned up anything that was negative or prejudicial, it would be in those volumes. You can rest assured that they did their best to find that evidence.

The Starr team has been fully supportive of the pro impeachment forces in the House of Representatives—indeed, so supportive that the independent counsel's ethics advisory professor, Sam Dash, resigned to protest Mr. Starr's zealous advocacy of the impeachment of the President.

Just this week, Mr. Starr and his staff have aggressively continued to support the House managers during these Senate proceedings. Some commentators have commented that the independent counsel is, perhaps, the honorary 14th House manager.

Now, I rehash this all not to cast aspersions at Mr. Starr but to remind the Senate that after 5 years and $50 million President Clinton may be the most investigated person in America. I would certainly say this for Mr. Starr: He is thorough. He is thorough. After all the work that has been done for them by the independent counsel, there is simply no way that the House managers are prejudiced by not being able to add to this record at this point.

Now, Mr. Manager MCCOLLUM repeated this morning that we are afraid of witnesses. We are not. We have reviewed in detail in our presentations what the evidence shows about both the perjury and the obstruction of justice allegation. We are not at all afraid of what the witnesses would say. Indeed, we know what they are going to say because it is all right there in the volumes before you. We think that you have everything there for the basis on which you can make a fair judgment and achieve a fair resolution. The managers' hope to call more witnesses is simply a product of their desire, their hope, their prayer, that something will come to rescue their case.

Let's be clear about one thing: Any delay in the process necessary for us to have fair discovery is on their heads. Our point here is that there is simply no need to go outside this record be-

cause what you have before you is voluminous, and it is a completely adequate basis for your decision.

As I pointed out the other day in the questioning period, the only thing left out of this record is evidence that might be exculpatory or helpful to the President. And if we must, we will as conscientious lawyers seek out that helpful additional evidence through discovery.

This body has been scrupulously fair in these proceedings, and I am confident it will be fair concerning our need for discovery; if the "genie" of discovery is let out of the bottle and live witnesses are deemed to be appropriate, then we are going to need a fair period of time for our own discovery.

But, again, the point today on this motion is that the managers have simply identified no particular need for witnesses, no specific areas of testimony that might contribute to what is already in the record and, indeed, no material questions—you can always think of questions that were unasked—but no material questions, given the allegation in the two articles that are not in the record before you.

Just recall, in the House the managers believed that this was an adequate record to come to you and urge removal of the President. They rested on that record in the House, and they impeached an elected President on the basis of that record. They cannot now complain that it is, for some reason, unfair to submit this same record to you for judgment at this point. We are not afraid of or reluctant to call witnesses, but we think that at the end of the day, the addition of more testimony from the three witnesses you have heard about won't affect any evidentiary judgment you have to make.

Mr. Manager BARR declared during his presentation a week ago Friday, on January 15, that this was in fact a relatively simple case, although we, the White House lawyers, would try to nitpick the evidence. He told you that what we have before us, Senators and Mr. Chief Justice, is really not complex—critically important, yes, but not essentially complex. The able House managers have kept insisting on their need for witnesses, but they haven't indicated what substantial, material, and relevant questions the witnesses would be asked which haven't already been asked or why such questions are essential or even relevant to the resolution of this proceeding.

Frankly, I think this is because there just aren't that many more questions to ask of these witnesses. Mr. Manager MCCOLLUM kind of let the cat out of the bag on this one when, a week ago Friday, he told you, "I don't know what the witnesses will say, but I assume if they are consistent, they will say the same thing that's in here."

I was surprised at some of the statements the managers made during the questioning period on Friday and Saturday. Mr. BRYANT said, "We would very much like to talk to some of these witnesses." And he added, "It is very critical that you talk to the witness before having that witness testify." Mr. Manager MCCOLLUM stated, "As a matter of fact, we think we would have been incompetent and derelict as presenters of the evidence if we hadn't talked to them first." Just this Sunday Mr. Manager HYDE, on "Meet the Press," observed that the purpose of the court-ordered Office of Inde-

pendent Counsel's chaperoned interview of Ms. Lewinsky last Sunday was to get a sense of what kind of a witness she would make.

I say this respectfully, but I am duty-bound to observe that it is, in fact, a dereliction of duty to have come this far in the process, to have made this serious set of charges as have been made against the President to seek his removal and not to have talked to the witnesses on whom they purport to rely. How can they have come this far and now tell you: Oh, yes, we now need to meet face to face with the witnesses? We don't know what they sound like, how credible they will be, but we have rested our judgment on this. We need to see them personally.

This procedure, I submit to you, is just backward. First, they filed the charges, which have been spoon fed by Mr. Starr. They don't bother to check these out; they take them at face value, and now they finally want to talk to the witnesses, and they again use Mr. Starr to threaten Ms. Lewinsky with imprisonment unless she cooperates with them.

Now, it is no answer to say that the witnesses didn't want to talk to us. There was a way to talk to them in the House of Representatives, and that was through the subpoena power that the House could have used if they had wanted to talk to their witnesses, if they had fulfilled the obligation they had before they proffered these charges to you.

This has been a partisan process on the part of the House managers. In the House, they had the votes. They didn't think they needed to talk to witnesses. When you have the votes and the independent counsel on your side, you don't need to independently develop the evidence. Indeed, Sunday, on CNN, Mr. Manager CANNON provided some insight——

Mr. HUTCHINSON addressed the Chair.

The CHIEF JUSTICE. The Senator from Arkansas.

Mr. HUTCHINSON. I object to White House counsel's continual reference to comments made on television programs which are outside the record before the Senate.

The CHIEF JUSTICE. This is on a motion to call additional witnesses, and the argument has been very free form and kind of far reaching. I think this is a permissible comment, so I overrule the objection.

Mr. Counsel KENDALL. Thank you, Mr. Chief Justice. I think Mr. Manager CANNON's comments did provide some insight into the need for witnesses or the justification for witnesses here. He noted that the Republicans had lost five seats in the November election, and he went on to say that, accordingly, the Republicans felt a need to speedily complete impeachment in the lame duck session before the 106th began its session. He said, "Republicans on the Judiciary Committee were committed to being done by the time we got done," and that is where we got on that track with no witnesses.

Now, they are trying to take a different track, and I think it comes from desperation. You have had the case analyzed before you; you have had the evidence in the case assessed. I think it has been demolished in an adversary proceeding.

The House managers are like the character in "David Copperfield," Mr. Micawber, who was always hoping that some-

thing would turn up. They continue to hope that something will turn up for them. They don't know what it is, but they believe they will know it when they see it and they hope if, for the first time in these proceedings, they actually talk to the witnesses on whom they have relied, they will find something to persuade you to overcome the evidence in the record.

Now the managers have said, "Well, we told the White House that they could have called witnesses in the House if they wanted to, and they chose not to do so, so it is really their fault." I respectfully submit to you that only in the world of Franz Kafka do you have to present evidence of your own innocence before you even hear the charges or the allegations against you.

It was the burden of the House to establish, by an adequate evidentiary basis, a case for impeaching the President. They failed to do that, I respectfully submit. They are a little like a blackjack player who sees 20 on the table and has 19 and is going to try to draw that 2, hoping against the odds. Here they are simply gambling. And gambling may have its place as a recreation, but I don't think it has a place in this impeachment trial when the fate of the President is at stake.

Now, I don't want to be uncharitable to the House managers—and they are able—but I think it is perhaps appropriate to remind you, as my partner Ms. Seligman did in her argument yesterday, that in their own Chamber the House managers sang a very different song about the need for witnesses. And to be fair, this was not just one manager; they sang as kind of a barbershop chorus. Most of them are on the record to this effect, and I think the very best witnesses you have about the need for witnesses are the House managers themselves.

Let's listen to some of the comments of the managers on whether live witnesses needed to be heard to supplement the evidence in the many volumes already gathered by the independent counsel.

For example, on November 5, Mr. Manager HYDE said:

> We believe the most relevant witnesses have already testified at length about the matters in issue, and in the interest of finishing our expeditious inquiry we will not require most of them to come before us to repeat their testimony.

He added that, "[Monica Lewinsky and Linda Tripp] have already testified under oath. We have their testimony. We don't need to reinvent the wheel."

The very next day, on November 6, Mr. Manager GEKAS stated:

> Bringing in witnesses to rehash testimony that's already concretely in the record would be a waste of time and serve no purpose at all.

On December 1, during a hearing before the House Judiciary Committee at which the committee received testimony concerning the consequences of perjury and related crime, Mr. Manager CHABOT stated:

> We could call more and more and more witnesses. We are trying to get this wrapped up as expeditiously as possible. I think both sides want to do that. If we call more witnesses and drag this on into next year, then they are going to scream because they say we are on a fishing expedition, we have already got enough evidence.

At that same period, Mr. Manager CANADY said, of the need for witnesses:

Now, we do have a responsibility to make certain that we act on a solid basis. We should not move forward with articles of impeachment on the basis of insubstantial evidence. I think all of us agree on that. The fact of the matter is that we have a mountain of sworn testimony. . . .

On December 9, Congressman COBLE, who was a member of the House Judiciary Committee, told us during our presentation on behalf of the White House:

Mr. Ruff, I want to address a couple of myths and one myth is that we have no evidence because there have been no fact witnesses called . . .

Five volumes sit alongside me. These are the same five volumes that are at our table that contain sworn testimony before a criminal grand jury, FBI interviews, depositions and other materials.

Mr. Manager HYDE made two statements on the floor of the House of Representatives during the debate over the articles of impeachment which I think bear quotation here.

On December 18, Mr. Manager HYDE stated:

We had the facts, and we had them under oath. We had Ms. Lewinsky's heavily corroborated testimony under a grant of immunity that would be revoked if she lied; we accepted that. . . .

And then the next day, on Saturday, December 19, Mr. Manager HYDE stated:

No fact witnesses, I have heard that repeated again and again. Look, we had 60,000 pages of testimony from the grand jury, from depositions, from statements under oath. That is testimony that we can believe and accept. We chose to believe it and accept it. Why reinterview Betty Currie to take another statement when we already have her statement? Why interview Monica Lewinsky when we had her statement under oath, and with a grant of immunity that if she lied, she would forfeit?

"Why interview Monica Lewinsky when we had her statement under oath, and with a grant of immunity that if she lied, she would forfeit."

After the House voted its two articles of impeachment, the House managers still saw no need for live witnesses. On December 29, Mr. Manager GEKAS stated:

We are going to make the case that there is already enough testimony under oath, in one grand jury testimony and affidavits.

Then again, a week later, Mr. Manager GEKAS stated:

In my judgment, there might not be any real rationale for calling Linda Tripp or Betty Currie or Vernon Jordan if the testimony of Monica Lewinsky is accepted as being what she offered on grand jury terms.

Roll Call reported on January 7 that Mr. Manager CANNON stated, regarding calling Ms. Currie as a witness in the Senate trial:

I am reluctant to call [Ms. Currie] because it's a rotten, nasty thing to do to a public servant.

When confronted with this inconsistency, the managers, who are talented attorneys and successful Congressmen, have all argued, "Oh, well. The forum has changed," as if it is no big deal for the House to impeach a President without witnesses. But it would be unconscionable for the Senate to acquit the President without first doing the "rotten, nasty thing"—Mr. Manager CANNON's phrase—to some witnesses. How can you have a trial, they protest, without witnesses? One might ask, How can you have a hearing without

witnesses? But the House did. How can you impeach a President without witnesses? The House showed you.

Finally, it is instructive to note that when the managers were presenting their case in the House in the Judiciary Committee, they did not declare that they would insist on witnesses when they got to the Senate. They did not tell their colleagues, We will not need witnesses in the House because we will have them in the Senate. No. They rushed this through the House because they had the votes and now they want to delay in the Senate because they are afraid they don't have the votes.

There is no reason, we respectfully submit, to delay this Chamber, to drag out these proceedings and defer doing the business of the American people.

I would like to discuss each of the five categories. I will call them categories. There are three witnesses. Then there are the two affidavits, and then there are the telephone records. There are really six. I would like to discuss these in terms of whether they add anything, or whether the managers have made a proffer that they add anything to the record which is now before you because I think that is the question you have to determine.

On this motion, you are not voting whether substantively to convict the President. You are simply determining, Is the record adequate?

Let's first take Ms. Lewinsky. On Sunday, the House managers, with the gentle assistance of the independent counsel prosecutors, were able to interview Ms. Lewinsky after schlepping her across the country from California. They did so despite the fact that the Senate had established by a 100-to-0 vote a procedure for the orderly calling of witnesses after discussion and debate. They did so after declining to interview Ms. Lewinsky at any time during the House proceedings when they could have compelled her appearance by the House subpoena power. And they did so without providing us here with any reliable record for what that "talk-fest" on Sunday may have produced.

Newspaper reports indicate that the managers did not take notes. You will recall, of course, that during the questioning period on Saturday they explicitly rejected a request they received during the question period that they provide either an unedited transcript or a videotape of that interview to be sure that the interview would be open to scrutiny for fairness, and ascertain whether Ms. Lewinsky in that interview really did add anything to the record. They declined to do that. But when they emerged from the Mayflower Hotel on Sunday, after meeting for their sidewalk press conference, we heard some general statements generally commending Ms. Lewinsky. Mr. Manager BRYANT called her "an impressive person." Mr. Manager HUTCHINSON praised her "intelligence and poise."

I thought to myself, where have we heard that before about Ms. Lewinsky? It was deja vu all over again. Of course, we heard from Mr. Jordan, from Ambassador Richardson, and from the people who interviewed Ms. Lewinsky for a job in New York. It is helpful that the House managers have now at least confirmed those observations in the record.

At their press conference we heard the managers make some abstract pronouncements about what Ms. Lewinsky was going to add—she would be a valuable witness; she would be a helpful witness; and it was a productive meeting and a benefit to our case.

That is what we heard. But Ms. Lewinsky's lawyer, Mr. Plato Cacheris, threw, if I might say, some cold water on those happy and optimistic pronouncements. It could not have been clearer in his comments that, not surprisingly, nothing new whatsoever had emerged from that session. You really didn't hear that. I think the House managers were quite honest about the session because you heard nothing about what had emerged from that today.

Mr. Cacheris told the press conference—some of you may have seen it: Ms. Lewinsky answered all their questions; there was nothing new; she added nothing to the record that is already sitting before the Senate. She shouldn't be called to the Senate to testify.

The New York Times reported yesterday that after the interview, Ms. Lewinsky told a friend: It went really well; I feel positive about it, but I didn't have anything new to say.

Now, according to the Washington Post, the managers were focused on making sure Ms. Lewinsky had no intention of changing her testimony. The Washington Post went on to confirm that she did not indicate any desire to change her testimony in any way. And the Post article continues that, in fact, Lewinsky reaffirmed her grand jury statement that no one ever asked her to lie or offered her a job in exchange for a false affidavit in the Jones case.

Now, as you are well aware, Ms. Lewinsky was interviewed extensively by the Office of Independent Counsel. She testified twice before the grand jury. She gave a lengthy deposition to the prosecutors. She was extensively interviewed by the agents. There are over 20 interview reports.

I should also add that a great deal of this comes after the President was examined in the grand jury on August 17. Ms. Lewinsky has given detailed and explicit testimony, particularly in her August 26 deposition, as to her account of the physical relationship she had with the President. Nothing at all would be added by further interrogation of her. Nothing could be gained by repetition in a Senate deposition or in the well of this body by a repetition of that testimony.

I confess I don't fully understand—I seem to hear Mr. Manager BRYANT and Mr. Manager MCCOLLUM say slightly different things about what they intend to present in the way of Ms. Lewinsky's testimony. The record on that is what it is. But whenever I hear somebody tell me, as the very able Mr. Manager BRYANT did, they don't need to cross-examine, really, I am reminded of what Senator Bumpers said, and he got it from H.L. Mencken, who probably got it from somebody else: The more they say they don't have to cross-examine, the more need I feel to cross-examine.

I don't know what they intended to do there, but in the grand jury the President plainly acknowledged an improper relationship with Ms. Lewinsky. He declined to answer further key questions about that. The Office of Independent Counsel did not seek either to compel him or to issue a new grand jury subpoena which would cause the President to come back and go through those explicit details.

The testimony is what it is, and I don't think anything further from Ms. Lewinsky is going to in any material way affect it or even add to it.

With regard to some of the conflicts that are there, I think we have addressed those in the question period. I am not going to go over them again in full. Did the improper relationship begin in November? Did it begin 6 or 7 weeks later? That conflict is utterly immaterial, I respectfully submit, in view of what the parties have acknowledged. Mr. Manager HYDE, indeed, stated in a House Judiciary Committee hearing on December 1 that that particular point did not strike him as a terribly serious count, and I agree with that.

The managers have claimed, Mr. Manager HUTCHINSON claimed this morning, that there is a contradiction in the testimony of the President and Ms. Lewinsky with regard to cover stories. This is not true. We have gone over that again and again. There is nothing that links this testimony to any deposition in the Jones case. These were discussed, the record shows, in a nonlegal context.

I don't think there is anything further to be gained from Ms. Lewinsky's testimony that is not already there in the record.

Let's take Mr. Vernon Jordan. Mr. Manager HUTCHINSON was kind enough to leave up here his copies of Mr. Vernon Jordan's five appearances before the grand jury. He held them up on a chart. I think it is proper to point out that Mr. Jordan's testimony runs over 900 pages. On March 3, the transcript is 196 pages; 2 days later, on March 5, with the transcript running to 212 pages, Mr. Jordan emerged from the grand jury, and he made the following statement which I would like to play for you:

[Text of videotape presentation:]

First of all it is a fact that I helped Monica Lewinsky find private employment in New York. Secondly, it is a fact that I took Monica Lewinsky to a very competent lawyer, Frank Carter, here in Washington, D.C. And thirdly, it is a fact that I kept the President of the United States informed about my activities. I want to say two further things. One is I did not in any way tell her, encourage her, to lie. And secondly that my efforts to find her a job were not a quid pro quo for the affidavit that she signed.

Mr. Jordan testified a third time before the grand jury on May 5, and that transcript runs to 285 pages. Finally, he testified two more times, on May 28, for 128 pages, and he observed as he exited the grand jury room, if we could have the videotape again:

[Text of videotape presentation:]

For the fourth time I have answered every question over and over and over again. I suspect, however that I will have to answer the same questions over and over and over again.

And guess what. Mr. Jordan was clairvoyant because he was called back to the grand jury for a fifth time on June 9. He said as he exited:

[Text of videotape presentation:]

When I came here in March, early March, I said that I helped Ms. Lewinsky get a lawyer. I helped her get a job. I had assurances that there was no sexual relationship and I did not tell her to lie. That was the truth then. And that is the truth today. And I've testified five times, over and over again to those truths.

One of the justifications Mr. Manager HUTCHINSON offered for calling Mr. Jordan was to explore an alleged conflict between Mr.

Jordan and Ms. Lewinsky over whether Mr. Jordan had told her to go home and make sure that notes she had been keeping were not there. Here, I think Mr. Manager HUTCHINSON is referencing a statement that Ms. Lewinsky made in her proffer to the Office of Independent Counsel describing her recollection of a breakfast she believed she had with Mr. Jordan. It is in the appendix volume at page 716.

Now, the thing to note, ladies and gentlemen, about this statement is its date. Ms. Lewinsky said this on February 1, 1998. She had written then that she expressed concern about Ms. Tripp to Mr. Jordan and that Ms. Tripp may have seen notes when she was in Ms. Lewinsky's house. According to the offer, "Mr. Jordan asked if the notes were from the President. Ms. Lewinsky said that they were notes to the President. Mr. Jordan suggested to Ms. Lewinsky," the proffer says, "that she check to make sure they were not there, or something to that effect," from Ms. Lewinsky.

Now, contrary to this supposed conflict, Mr. Jordan was never asked in the grand jury on any of the five occasions he was there—all of which, I remind you, were after this February 1 proffer about this matter. He wasn't asked about it. It doesn't concern the President, in any event. And I think, most importantly, it is nowhere alleged, if you look in the actual articles—if you look at article II, nowhere is this conversation alleged in any way as a basis for impeachment, a basis for charging the President with obstruction. I think in fact it is a gratuitous smear of Mr. Jordan. And it certainly does not provide a basis for extending this proceeding to ask him questions about it.

Now, Mr. Manager HUTCHINSON also claims that there is a conflict between the testimony of Ms. Lewinsky and Mr. Jordan on the issue of whether they discussed specific changes that were subsequently made in her affidavit. He said to you that he thought that was a basis for calling them as witnesses. However, the record is clear—it could not be clearer—that the idea of certain deletions in the affidavit came from Ms. Lewinsky's lawyer, Mr. Frank Carter.

As I mentioned in my presentation on Thursday, Ms. Lewinsky discussed that she had talked to Mr. Jordan about some affidavit changes and he told her: Go talk to your lawyer.

In any event, Ms. Lewinsky's lawyer, Mr. Frank Carter, testified unequivocally to the grand jury: I don't recall Vernon ever asking me the substance of what Monica told me or tried to talk about the substance of what Monica told me. He clearly never told me how I should proceed or what I should do.

Mr. Carter further testified that paragraph 6 of the affidavit in its draft form, the last part of the sentence, "has certain words about the private meeting."

That paragraph, Mr. Carter—Ms. Lewinsky's lawyer—testified, was modified when we sat down in my office on January 7. He further testified that it was his idea before that meeting to take it out because he didn't want to give Ms. Jones' lawyers any hint of a one-on-one meeting.

There is simply no basis to call Mr. Vernon Jordan once again to have him go through the things he has testified about a great many times already.

Now we come to Sidney Blumenthal. Mr. Manager ROGAN very ably argued that there was a need to call Mr. Blumenthal because of Mr. Blumenthal's testimony as to what the President had told him, Sidney Blumenthal, in the aftermath of the explosion of publicity over the Lewinsky matter in January a year ago.

First of all, there is no conflict here that is material because the President has never disputed Mr. Blumenthal or his aide's accounts of this conversation. Any dispute is wholly immaterial as to the two counts—the two articles of impeachment. The President was examined extensively about this subject in his own grand jury testimony and he testified as to what he tried to say. But he also added that in this period things were a "blur" is a term he used one time; "a blizzard" was a term he used another time—that he had discussions with a number of his aides, including Mr. Blumenthal, he tried to be careful in what he said, he thought he was technically accurate, but he would not dispute and did not dispute their characterizations of what they recalled of the conversations with him.

Again, Mr. Blumenthal—Mr. ROGAN pointed this out—testified three times before the grand jury. His recollection of his conversations with the President has been analyzed in detail and a further round of deposition would add nothing of substance to that testimony. Indeed, the President's speech to the Nation the day of his grand jury testimony, when he spoke to the Nation on the evening of August 17, also represented an acknowledgment by the President that he had misled his aides, such as Sidney Blumenthal.

As I indicated last Thursday, however, any statements to the White House staff could have had no impact whatsoever on the Paula Jones case, as article II alleges each of the seven grounds has, because Mr. Blumenthal had no firsthand knowledge of the President's relation with Ms. Lewinsky. He could only report to the grand jury what the President had told him, however misleading those statements of the President may have been at the time. There is no dispute here, there is no material reason to call Mr. Blumenthal, except to try to embarrass the President by the presentation of testimony from a member of his senior staff.

Now, the next two things that the managers would seek to add to the record are not, they tell you, live witness testimony. But don't let that fool you. They want to put in two sworn declarations—like an affidavit—from two people. One of them is a Mr. Wesley Holmes, a lawyer for Ms. Paula Jones, and the other is Mr. Barry Ward.

Now, I don't have the pleasure of knowing Mr. Wesley Holmes, but I do know Mr. Barry Ward. He is a very intelligent, very hard-working and knowledgeable young lawyer in Little Rock, AR, who works as a law clerk for Chief Judge Wright. He has got an encyclopedic knowledge of Razorback athletic lore. He has a lot of fine characteristics. He is very helpful as a law clerk and gets information to you and back very efficiently. But there is one thing Mr. Ward is not, and I am sure he would agree, a mind reader. He is not a mind reader. There were a number of people in the room at the deposition. None of them were mind readers. They could all give their testimony about what they thought was going through the President's mind. The President has addressed that a number of times. You have seen the videotape.

Now, the second witness is exceedingly interesting, and that is Mr. Holmes. And Mr. Holmes would give a sworn declaration to, among other things, say what he had in mind when he issued the witness subpoena to Betty Currie, which was days after the President's conversation with her on December 18.

Well, he would be a very interesting witness to depose, let me tell you. This is one of Paula Jones' lawyers talking about offering a declaration about his litigation strategy. And I think the opportunity to depose him would provide a great deal of information about what really motivated the events of January 1998. I think we could show that there were a number of connections between the independent counsel, Linda Tripp, and the Paula Jones lawyers. But I don't think you need to get into that briar patch because Mr. Holmes is not a mind reader any more than Mr. Ward is. You simply don't need that testimony to illuminate the record.

Before I leave that, let me make the point that while the managers would like very much to throw in a couple of sworn declarations, you should be assured of our need to take discovery and, in Mr. Holmes' case, take comprehensive discovery. I don't think anything in S. Res. 16—I don't know if you have gotten to this, but I don't read the resolution as authorizing simple hearsay evidence.

We would need to depose the Paula Jones lawyers in some detail, and I think they have now waived significant legal protections that would make that possible.

Finally, there was a category of telephone records. It is a little hard to address that category. Those are just documents. I don't think the record need be expanded by their addition, and I will tell you why.

Telephone records, as I said the other day, really tell you nothing, unless it is very important to time, to date a particular call. They really are inscrutable. You have to have the witness testify about what they mean. I don't see anything in there that would justify opening the record to add certain telephone records.

Finally, I want to be candid with you. I don't want to be alarmist. I want to be honest, though, about what opening the door for discovery will mean for this process. I said before that the Senate had been fair in these proceedings, and it has been fair. I think the identification of a specific record which the parties could agree on, have in the sunlight, talk about, argue about, was the fair thing to do and the right thing to do. I think if discovery is inevitable, we will anticipate and believe that you will be fair in allowing us the discovery we are going to need.

I ask you, if you would, to read our trial memorandum because at pages 124 to 130 we have set forth there our need for discovery. It is not a new invention. Should the Senate decide to authorize the House managers to call additional witnesses live in this proceeding or have the depositions taken, we will be faced with a critical need for the discovery of evidence useful to our defense.

I made the point that the discovery of evidence in the Office of the Independent Counsel proceeding was—not to put too fine a point on it—not aimed at getting us exculpatory or helpful evidence. We need to be able to do that. We have never had the kind of compulsory process, the kind of ability to subpoena documents and witnesses that you will have in a garden variety civil case. We

have not had access to a great deal, many thousands of pages of evidence which is, first of all, in the hands of the House managers that they got from the Office of Independent Counsel, but did not put into the public record, did not print up. We also need discovery of those other documents, witness testimony transcripts, interview notes, other materials, which may be helpful or exculpatory that are in the hands of the independent counsel.

Our dilemma is this: We do not know what we do not know. That is what discovery means. You have to get discovery so you can find out what is available. It may not necessarily prolong a trial, but it makes you able to defend your client in the way you have to be able to do so as a lawyer. It doesn't turn on the number of witnesses.

The calling of these witnesses produces a need in us to be ready to examine them, to cross-examine them. It initiates a process that leaves us unprepared and exposed unless we have adequate discovery. This is a proceeding, I need not remind you—I know everyone recognizes its gravity—to remove the President of the United States. You have to give us, and I believe you will, the discovery that will enable us to represent the President adequately, competently, and effectively.

The sequence of discovery is also important. I want to be clear about that. It is all very well, and I recognize how it happens, for one side to say, "Well, we are going to put on three witnesses and they can put on three witnesses." Ladies and gentlemen of the Senate, we don't know right now how to make a reasoned choice because we haven't had the discovery you would normally have to do that. We would first need to obtain and review the relevant documents. I have indicated where those are. We would then need to be able to depose relevant witnesses. We need to know whether the witness depositions that the House managers had taken would need to lead to other depositions there. Only at that point when we have had discovery of our witnesses will we be able to identify the witnesses we might want to call.

This is a logical procedure, and I think those of you who have tried cases will recognize it as such. It is simply impossible from where we now are to see how a witness designated by the House managers can be fairly rebutted without ourselves having access to all of the available evidence.

Given what is at stake, I think fundamental fairness requires fair discovery. We will be expeditious, but in the event the genie is out of the bottle, we need time, we need access to defend the President in the way any client ought to be defended.

I think the Senate has wisely elected to proceed on a voluminous record, a record that is available for public scrutiny that was assembled by people not favorable to the President. I think you have enough evidence to make your decision on the basis of that record.

But in the event you decide to expand it, affording us adequate discovery is essential if we are really going to practice the rule of law as I believe the Senate would intend for that rule of law to be practiced in its proceedings.

But let me conclude by saying that I don't think, and I respectfully submit to you, that there is a need to prolong this process. We hope that you will render your decision in a manner that is speedy,

and we are confident that you will decide to make that decision in a manner that is fair, and that this body will, as so often it has done in past times of crisis, be able to bring to the country both the closure and reconciliation that the country wants so very much. Thank you.

The CHIEF JUSTICE. Does counsel for the President have any more presentation?

Mr. Counsel KENDALL. If I may, Mr. Chief Justice, I reserve the remainder of my time.

The CHIEF JUSTICE. No, you can't reserve it. It is open, respond, and rebuttal.

Mr. Counsel KENDALL. I will then quitclaim the rest of my time.

The CHIEF JUSTICE. Very well.

[Laughter.]

Mr. Manager BRYANT. Mr. Chief Justice, may I inquire how much rebuttal time we have remaining?

The CHIEF JUSTICE. Thirty minutes.

Mr. Manager BRYANT. Thank you, Mr. Chief Justice. I will be brief and ask other managers to come up and follow me. I have four quick points to make.

Before I get into that, I want to thank my distinguished colleague from DC, Mr. Kendall. Over my practice of law for several years, I have received a number of jabs before in the courtroom but never so gentle and never so eloquently, and I thank you.

I think his presentation was very good but probably makes the best illustration of why witnesses are needed in that he has chosen to use selective quotes. He likes to use those quotes and point to the managers over there where we were quoted without a real context and certainly that is what this hearing has been about so far, both sides picking and choosing among quotes that best illustrate the point we want to make at the time.

Really, what we need is the big picture, the entire, complete picture that witnesses and only witnesses can provide in this case.

Let me go back to a couple of the selective quotes, and those are the quotes that we made back in the House when we were involved in the proceedings which, I remind each one of you involved, are the very same stacks of books that they have shown you very often in the past as the record here and why do we need to go outside the record? That very same record was there in the House, and it was at that time Mr. Lowell, the minority counsel, was representing the President's interests, but also Mr. Kendall was there. In fact, both together examined Mr. Starr. That was when they were making the request for the witnesses, based on this very same record. Notwithstanding that, we need witnesses. I simply point that out to you to show you that Mr. Kendall and his very talented staff do not have a monopoly on consistency.

Another example of selective quoting has to do with quotes made about our occasion to visit Ms. Lewinsky, to talk to her. This was the one witness we had not been able to talk to. He pulled those quotes out as if we needed to talk to all the witnesses. We don't need to talk to all the witnesses, but we just needed to sit down and talk with her. I might tell you she was ably represented by

three attorneys. She had as many lawyers there as we did and perhaps more. So she was not imposed upon.

In terms of my statement about discovery, I think I perhaps was misunderstood, but I certainly conceded the White House might want discovery to depose Ms. Lewinsky. But I still have a hard time determining why they would need to discover what Ms. Currie might want to say; she sat right outside the President's office every day, or what Mr. Jordan might say; he plays golf with Mr. Clinton every day, or Mr. Podesta, his former Chief of Staff.

I am just trying to save this Senate some time on the question why we would need to go through discovery of those types of people.

My last point I would like to make before I bring Mr. HUTCHINSON in is Mr. Kendall's point—and I am not sure where they were going but perhaps trying to worse case this situation—in terms of taking forever and a day to conclude all kinds of witnesses. He indicated we needed to take all the lawyers of Paula Jones and question her motivation. I suggest to you that a real clue for her motivation for this lawsuit, we could say, was the 850,000—reasons motivation she received the other day. But let me end with that note and bring up Mr. HUTCHINSON who will continue this process.

Thank you.

The CHIEF JUSTICE. The Chair recognizes Mr. Manager HUTCHINSON.

Mr. Manager HUTCHINSON. I thank you, Mr. Chief Justice. I will just take a moment.

Mr. Kendall did an outstanding job, as he always does, of making his case for not calling witnesses. I thought the most compelling example as to why we need witnesses was the fact that he called a live witness, Vernon Jordan. Mr. Jordan testified here in this Chamber. Why did they not present a transcript? Why did he want to bring a live witness? Because it was real. It was alive. He was more meaningful than a transcript. He told the story in short, concise ways that I have not been able to do during my presentation during the last week. We would like to have the same opportunity, not through video but to present a live witness so that he could cross-examine, so that we could question. I think that is a fair proceeding.

Mr. Kendall raised the point that the statements about the notes that Ms. Lewinsky testified she discussed with Mr. Jordan were referenced in her February 1998 proffer. When I was making my point, I was referencing her August grand jury testimony, not the February proffer, because my recollection is that the February proffer that was submitted by Mr. Ginsburg had subsequently become a subject of litigation because we were not able to reach an immunity agreement. So perhaps that was the reason that subject was not inquired into by the independent counsel. For whatever reason, my review of the transcripts is that that subject was never broached with Mr. Jordan. I do not profess perfect knowledge of it, but that is my understanding of it.

And then finally I want to also look at the discovery that Mr. BRYANT referenced. There was a gambling illustration that Mr. Kendall used about blackjack. But another part of poker is bluffs.

And I don't know whether they are bluffing. I don't know whether they are serious about all the discovery that they need to have. But I know that lawyers do that sometimes to intimidate, to scare you away.

But I think even more important is that the House managers have submitted to the rules of the Senate. We were not particularly happy about all of them, but we recognized it was important to have legitimacy in this process. We accept that. We move on.

I hope that whatever rules of discovery, whatever limitations you wish to put, whatever timeframes you wish to put, the White House counsel will be as amenable to the desire of this Senate and this Nation to conclude this as we have been in adopting what our desires are to your schedule.

I yield to Mr. MCCOLLUM.

The CHIEF JUSTICE. The Chair recognizes Mr. Manager MCCOLLUM.

Mr. Manager McCOLLUM. Mr. Chief Justice, thank you very much.

I want to make a couple of observations, and one of them seems pretty apparent. Mr. Kendall says they are not afraid and I was wrong in characterizing them as being afraid—the White House counsel—of calling witnesses. But I am going to tell you, I cannot rationalize any other way why he would be out here to make the pitch as hard as he is against witnesses, especially the sort of threat that this is going to go on and on and on if we open the door and we call three witnesses. You know, we are down from thinking we ought to have 10, 12, maybe 15 witnesses, to 3—Monica Lewinsky, Vernon Jordan, and Sidney Blumenthal. And we have introduced three—or proposed to introduce three very simple pieces of new evidence. That can't take a lot of discovery, the need to go further than that. If he wants to produce witnesses, that is fine. But I just can't imagine why that opens that door.

Mr. Holmes he talks about, the attorney. What is the significance of that declaration or affidavit, that sworn declaration that we would like you to take in that says, "well, we have to depose Mr. Holmes." That was put in very simply because counsel on the other side—I don't accuse them of doing it intentionally, but the other day they misled us, I think unintentionally misled you, on the idea that the President, at the time he left the deposition in the Jones case and went over to talk to Betty Currie the next day, didn't and couldn't have had any idea that she was going to be called as a witness. In fact, I think they said she never was on the witness list and she never was subpoenaed.

What Mr. Holmes' declaration does, as I said earlier, is bring into the record the subpoena that in fact was issued within a day or so of that time of when Betty Currie was talked to. Remember, she was talked to twice, the notice about it and her name being put on the witness list—that is what that is all about—and a general explanation of why they chose, as attorneys, to make that case, why they chose to put her name out there, and subpoena her, so it is clear on the record.

Very simple. If you look at it—and I am sure you will have it before you—his declaration is very short. It is about three para-

graphs. And it goes straight to the point. And it encloses these accompanying documents.

I don't think you should, for one minute, think it opens the door to some great big, gigantic discovery period. That is simply an idle threat to intimidate, in my judgment—with a proper intimidation effort, proper tactic; I don't accuse him of anything improper—to try to discourage you from letting us have these three witnesses.

Second, I want to point out that with respect to some of the things that I said, one thing I did say earlier is I don't know what all the witnesses would say if we called them. I don't know what they all would say, certainly. But I would expect them all to be consistent with what they have already said in their sworn testimony. And there is nothing inconsistent with my expecting them to be consistent on the facts.

We already know with that sworn testimony in the case of Monica Lewinsky—she has immunity—if she deviates and goes off of it, she can get herself in trouble. But by no means does my expectation that the testimony you already have will remain true mean that I don't think there are new things to be brought out or that you shouldn't have live witnesses here.

I thought it interesting that Mr. Kendall totally ignored the one thing that was most significant, in my mind, and that is the whole idea that there is a need for witnesses out here to determine their credibility, to check their demeanor, to see how they respond to questioning, to do all of those things that I described earlier, that any reasonable attorney in any courtroom setting in this country in a criminal case—and you do have to decide whether the crimes were committed or not—would expect to do. So you can, as my colleagues have said, look them in the eye and make that determination yourself. He didn't even address that. And I think that that alone is sufficiently good reason to have a live witness here, as I said before to you.

So with that in mind, I will yield to Mr. ROGAN.

The CHIEF JUSTICE. The Chair recognizes Mr. ROGAN.

Mr. Manager ROGAN. Mr. Chief Justice, Members of the Senate, Mr. Kendall made a very able and strong presentation. It was particularly effective when he brought up a series of quotations from House Members and House managers talking about the need for witnesses or the lack thereof. It would be more effective if it were presented in context, but it could not be, because the context of every single one of those quotations was in reference to the distinction between the House's function as the accusatory body versus the Senate's constitutional function of being the body where an impeachment case is tried. There he blurs the distinction. That is why in the Constitution a President is impeached solely on the majority vote. But removal requires at the trial a two-thirds vote.

Now, Mr. Kendall's presentation begs the question, did the founders get it wrong when they designed this process? Did the founders simply intend for us to waste our resources rather than conserve them and simply do the very same thing, first in one body and then in the other, with the sole distinction that the only difference would be the ultimate vote? That was not their intent. That was not the procedure established by the Constitution. And it is

not the procedure recognized throughout the country in court proceedings.

There is a reason why courts of inferior jurisdiction will be able to hold a defendant in a criminal case to answer for trial at a preliminary hearing based on hearsay testimony, based on transcripts, based solely on police reports.

But that defendant at a trial has a constitutional right to come forward. The right to confront and cross-examine witnesses is supremely guaranteed in the Constitution because the framers understood the difference, even if White House counsel refuses to acknowledge the difference.

The argument they have really isn't with the House managers. Their argument is with the precedence of the House. Their argument, in fact, is with people like the venerable Barbara Jordan, our late distinguished former colleague. She understood the difference between the House's function in an impeachment role versus the Senate's function. She said during the Rodino hearings in establishing the division between the two branches of the legislature, the House and the Senate:

> Assigning to one the right to accuse and to the other the right to judge, the Framers of the Constitution were very astute. They did not make the accusers and the judges the same person.

Now, in the words of Yogi Berra, I fear that we are going through "deja vu all over again" with Mr. Kendall's able argument, because what he has accentuated in this presentation has been accentuated by White House counsel ever since they first rose to address this body at the lectern, and that is the complaint that no witnesses were called before the House Judiciary Committee, and how wrong it is for the House managers now to assert the need and the right to have witnesses before this body when, in fact, no witnesses were called before the Judiciary Committee.

Once again, he mistakes the function of the two Houses. But I would invite the Members of this body, if that is an issue concerning them, to go back and review the voluminous transcripts during the Judiciary Committee where Chairman HYDE did everything but get on his knees and beg the members of the President's defense team, beg our colleagues on the other side of the aisle, to identify for us which witnesses they wished to dispute, what facts they wanted to challenge, to let us know the witnesses where there was a contention in the evidence. And despite their complaining and despite their griping and despite their anger over a supposedly unfair process, they never once identified in the factual record whose testimony they wished to challenge.

What we heard repeatedly, day after day in the hearing and outside before the cameras, was an attack upon the process rather than an identification of the issues where there are factual disputes. In fact, they refused to identify, despite the repeated pleas of Chairman HYDE, who those witnesses were that they felt were appropriate because the chairman said, "Tell us who they are, we will call them."

They champion the cause of witnesses in word but they do not champion the cause of witnesses in deed, at least not in the House, because the same people who were complaining of the unfairness in the House for not having witnesses suddenly have an allergic re-

action to the concept of witnesses being called before this body where it counts the most, where the ultimate decision is to be made, where the triers of fact have to make the constitutional decision whether the case is sufficient for removal of the President.

Mr. Kendall's repeated hints and statements that somehow they were denied some form of due process in the House by not being able to call witnesses is patently unfair and does not withstand the test of the record. Chairman HYDE alluded to it a couple of days ago, and based upon Mr. Kendall's presentation, I feel it is worth a minute or two of this body's time. Mr. Kendall has stated in these proceedings, and I am quoting:

> We have never had the chance to call witnesses ourselves, to examine them, to cross-examine them, to subpoena documentary evidence—at no point in this process.

The record is to the contrary:

On October 5, the House passed a procedure by a voice vote which included the right to call witnesses. On October 21, the House Judiciary Committee staff met with Messrs. Ruff, Kendall, and Craig. At that time, Judiciary Committee staff asked the White House to provide any exculpatory information and provide a list of any witnesses the President wished to call. On November 9, the House Judiciary Committee staff wrote to Messrs. Ruff, Kendall, and Craig and again informed them of the President's right to call witnesses. On November 19, Independent Counsel Starr testified before the House Judiciary Committee. The President's counsel was given the opportunity to question the independent counsel. The President's counsel did not ask a question relating to the facts of the independent counsel's report and allegations against the President. On November 25, Chairman HYDE wrote a letter to the President asking the President, among other things, to provide any exculpatory information and inform the committee of any witnesses he wished to call. On December 4, 2 working days before the presentation of the President to the Judiciary Committee, counsel for the President requested to put on 15 witnesses. The White House was allowed to present all 15 witnesses, and not a single one of the 15 witnesses did they wish to call, that they asked to call, were factual witnesses.

And so the complaints of unfairness are unfair.

One other point I want to make because again I see a reversal in roles, is that Mr. Kendall can't seem to decide in what type of "ogre" role he wants to portray us, because he said in his presentation just a few minutes ago that we were somehow—at least he alluded to the fact we were somehow tools of Judge Starr and the Office of Independent Counsel. I was a little surprised to hear him suggest that Judge Starr spoon-fed us the charges, and that Judge Starr spoon-fed them to us to the point where he didn't know whether Judge Starr should be deemed an honorary member of the House management team.

Well, that is an interesting proposition because it seemed to me just a day or two ago the same lawyers who are now making this allegation were claiming constitutional unfairness before this body and asking that this body dismiss the articles of impeachment. Why? Because the House Judiciary Committee and the managers didn't present the exact same charges that the independent counsel suggested. You can't have it both ways. You can't fashion the argu-

ment depending on what the result is being sought, and yet that is exactly what the managers with the White House counsel are attempting to do.

Yesterday we were renegades who didn't follow the strict rules of Judge Starr and didn't give them proper notice. Now, of course, he is the marionette and we are the puppets doing his will.

Members of this body, it is the job of the House of Representatives, it is the constitutional obligation of the House of Representatives, to act as the accusatory body in an impeachment proceeding. The Constitution gives the authority to this body to try that case. This is the place for trial. This is the place to determine guilt. This is the place to determine credibility. This is the place for witnesses.

Mr. Chief Justice, I yield the remainder of our time to our distinguished chairman of the House Judiciary Committee.

The CHIEF JUSTICE. The Chair recognizes Mr. Manager HYDE. Mr. Manager HYDE, you have 9 minutes remaining.

Mr. Manager HYDE. I won't use the entire 9 minutes.

Mr. Chief Justice, distinguished counsel and Senators, I will be very brief. Mr. ROGAN and my colleagues have handled this very well, but there are just a couple of things I want to talk about.

It is disturbing, it is annoying, it is irritating when I hear that the counsel for the President had been cut off from information, that we have sequestered things. I pleaded with them to produce witnesses, made the subpoenas available to them. They have a positive allergy to fact witnesses.

Oh, they will come up with academics. We saw a parade of professors. You know what an intellectual is? It is someone who is educated beyond their intelligence. I certainly don't mean that of some of those Harvard professors who they paraded out, even though we disagreed with them, but you would get eye strain looking for a fact witness.

And it is remarkable, the flexibility they have, that they complain we called no witnesses in the House. Now they are complaining that we are calling witnesses in the Senate as though they don't understand the difference in the threshold. There we had to prove we had enough to submit to the Senate for a trial but not try it over there. And a majority vote prevails over there. Here, you have an extraordinary mountain to climb: a two-thirds vote and the trial is here, and that is the difference.

Witnesses help you. They won't help me. I know the record. I am satisfied a compelling case is here for removal of the President. But they will help you. And we aren't dragging this out. We have been as swift as decency will let us be throughout this entire situation.

Their defense has never been on the facts. If they can come up with a good fact witness that has something to say, we will see a reenactment of the Indian rope trick, it seems to me. We will see professors, though, if past is prologue. I don't know. But the threat of prolonged hearings, I suppose, is supposed to make you tremble. It doesn't to me, but then different things—different strokes, I guess, for different folks. Their defense has been to demonize Mr. Starr to a fare-thee-well and then yell about the process. That is their defense.

I will be frank with you. I am not sure I could stand a lot more of that. But that is what they will do. As far as the information

not available to them, maybe not. Maybe some of the stuff we got from the independent counsel was held in executive session, but it was available to Mr. CONYERS, available to Abbe Lowell, available to every Democrat on the Judiciary Committee, and they went through it. I wrote with Mr. CONYERS to Mr. Starr a letter saying, "Show us what you didn't send us. Let's look at what you have over there. There might be some exculpatory material." Mr. CONYERS sent his people over and they looked and they looked and they looked, and I would assume they were in touch with you folks. I would assume they were. If they weren't, they should have been. That is a breakdown in communication.

We have a good case. We have an excellent case without the witnesses. But the witnesses help you. We have narrowed it down to three—a pitiful three. I should think you would want to proceed with that minimum testimony, and Mr. Kendall can try his cross-examination skills on them, and that I want to watch.

Thank you.

The CHIEF JUSTICE. The time of both sides has now expired. The Chair recognizes the majority leader.

RECESS

Mr. LOTT. Mr. Chief Justice, in view of the time that we have been in without a break, the next pending business is that we would want to have a motion by Senator HARKIN or Senator WELLSTONE. Before we do that, I suggest that, without objection, we take a 15-minute break.

There being no objection, at 3:42 p.m., the Senate recessed until 4:04 p.m.; whereupon, the Senate reassembled when called to order by the Chief Justice.

The CHIEF JUSTICE. The Chair recognizes the majority leader.

UNANIMOUS-CONSENT AGREEMENT

Mr. LOTT. Mr. Chief Justice, I ask unanimous consent that during each day the Senate sits as a Court of Impeachment, it be in order for Senators to submit to the desk statements and introduce legislation.

The CHIEF JUSTICE. In the absence of objection, it is so ordered.

Mr. LOTT. Now, Mr. Chief Justice, I believe at this point it would be in order for a motion to be made that we go into open debate, if any, and then when that is dispensed with, we would go to the move to close and would deal with that issue, and then we would begin the closed session. So I believe we are ready for a motion to be offered, if any, at this time.

The CHIEF JUSTICE. The Chair recognizes the Senator from Iowa, Mr. HARKIN.

MOTION TO SUSPEND THE RULES

Mr. HARKIN. Mr. Chief Justice, in accordance with rule V of the Senate's Standing Rules, I filed a motion of intent to move to suspend the rules to open debate on this motion to subpoena witnesses. The motion is at the desk. It is No. 5, I believe.

The CHIEF JUSTICE. The clerk will report the motion.

The legislative clerk read as follows:

The Senator from Iowa, Mr. HARKIN, for himself and Mr. WELLSTONE, moves to suspend the following portions of the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials in regard to debate by Senators on a motion to subpoena witnesses during the trial of President William Jefferson Clinton.

(1) The phrase "without debate" in rule VII.

(2) The following portion of rule XX: ", unless the Senate shall direct the doors to be closed while deliberating upon its decisions. A motion to close the doors may be acted upon without objection, or, if objection is heard, the motion shall be voted on without debate and by yeas and nays, which shall be entered on the record"; and

(3) In rule XXIV, the phrases, "without debate except when the doors shall be closed for deliberation in that case" and ", to be had without debate."

Mr. HARKIN addressed the Chair.

The CHIEF JUSTICE. The Senator from Iowa.

Mr. HARKIN. I ask for the yeas and nays.

The CHIEF JUSTICE. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The CHIEF JUSTICE. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from Maryland (Ms. MIKULSKI) is absent due to illness.

The yeas and nays resulted—yeas 41, nays 58, as follows:

[Rollcall Vote No. 3]

[Subject: Harkin motion to suspend the rules]

YEAS—41

Akaka	Edwards	Levin
Bayh	Feingold	Lieberman
Biden	Feinstein	Moynihan
Bingaman	Graham	Murray
Boxer	Harkin	Reed
Breaux	Hollings	Reid
Bryan	Hutchison	Robb
Cleland	Inouye	Sarbanes
Collins	Johnson	Schumer
Conrad	Kennedy	Specter
Daschle	Kerrey	Torricelli
Dodd	Kohl	Wellstone
Dorgan	Lautenberg	Wyden
Durbin	Leahy	

NAYS—58

Abraham	Domenici	Landrieu
Allard	Enzi	Lincoln
Ashcroft	Fitzgerald	Lott
Baucus	Frist	Lugar
Bennett	Gorton	Mack
Bond	Gramm	McCain
Brownback	Grams	McConnell
Bunning	Grassley	Murkowski
Burns	Gregg	Nickles
Byrd	Hagel	Roberts
Campbell	Hatch	Rockefeller
Chafee	Helms	Roth
Cochran	Hutchinson	Santorum
Coverdell	Inhofe	Sessions
Craig	Jeffords	Shelby
Crapo	Kerry	Smith (NH)
DeWine	Kyl	Smith (OR)

Snowe	Thompson	Warner
Stevens	Thurmond	
Thomas	Voinovich	

NOT VOTING—1

Mikulski

The CHIEF JUSTICE. On this vote the yeas are 41, the nays are 58. A quorum being present, two-thirds of those Senators voting not having voted in the affirmative, the motion is not agreed to.

The Chair recognizes the majority leader.

Mr. LOTT. Mr. Chief Justice, that motion being defeated, I believe it is now in order to move to close the session so we can have debate on the question of the motion to subpoena witnesses.

Mr. LOTT. I so move, Mr. Chief Justice.

The CHIEF JUSTICE. The question is on the motion.

The motion was agreed to.

Mr. LOTT. Mr. Chief Justice, I ask that Senators remain at their place, but I will put in a request for a quorum call just momentarily so the appropriate arrangements can be made for the closed session.

Mr. Chief Justice, I suggest the absence of a quorum.

The CHIEF JUSTICE. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

CLOSED SESSION

[At 4:29 p.m., the quorum was dispensed with and the doors of the Chamber were closed. The proceedings of the Senate were held in closed session until 8:01 p.m.; whereupon, the Senate resumed open session.]

OPEN SESSION

Mr. LOTT. Mr. Chief Justice, I now ask unanimous consent that the Senate return to open session.

The CHIEF JUSTICE. In the absence of an objection, it is so ordered.

ADJOURNMENT UNTIL 1 P.M. TOMORROW

Mr. LOTT. Mr. Chief Justice, I ask unanimous consent that the Senate stand in adjournment as under the previous order.

There being no objection, at 8:02 p.m., the Senate, sitting as a Court of Impeachment, adjourned until Wednesday, January 27, 1999, at 1 p.m.

WEDNESDAY, JANUARY 27, 1999

[From the Congressional Record]

The Senate met at 1:07 p.m. and was called to order by the Chief Justice of the United States.

TRIAL OF WILLIAM JEFFERSON CLINTON, PRESIDENT OF THE UNITED STATES

The CHIEF JUSTICE. The Senate will convene as a Court of Impeachment. The Chaplain will offer a prayer.

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Dear God, leadership has its defining days in which crucial decisions must be made. You know that this is an important one of those days. In a few moments, votes must be cast. Now in the quiet, the Senators wait to be counted. It is a lonely time. Beyond party loyalties, those on both sides of the aisle long to do what ultimately is best for our Nation. Debate has led to firm convictions. Give the Senators the courage of these convictions and the assurance that, if they are true to whatever they now believe is best, You will bless them with peace. We intercede for them and the heavy responsibility they must carry. Imbue them with Your calming Spirit and strengthen them with Your gift of faith to trust You to maintain unity once the votes are tallied. We commit the results to You. Our times are in Your hands. Through our Lord and Saviour. Amen.

The CHIEF JUSTICE. The Sergeant at Arms will make the proclamation.

The Sergeant at Arms, James W. Ziglar, made proclamation as follows.

Hear ye! Hear ye! Hear ye! All persons are commanded to keep silent, on pain of imprisonment, while the Senate of the United States is sitting for the trial of the articles of impeachment exhibited by the House of Representatives against William Jefferson Clinton, President of the United States.

THE JOURNAL

The CHIEF JUSTICE. If there is no objection, the Journal of proceedings of the trial is approved to date.

The majority leader is recognized.

ORDER OF PROCEDURE

Mr. LOTT. Mr. Chief Justice, in a moment we will begin two consecutive votes. The first will be on the motion to dismiss. That will be followed by an immediate vote on the motion to subpoena. Following those votes, there will be an opportunity to describe how we would go forward from there with the depositions. I have discussed this with Senator DASCHLE. It is likely that we would take a break at that point so that we could have further discussions with our conferences to make sure we understand how that subpoena and deposition process would go forward. I have a resolution prepared. We have some simpler ones that we can consider. But we would want to discuss those with each other during the vote, and perhaps even after the two votes occur, depending on what the results are.

The idea is that we have now before us Senate Resolution 16, which has brought us to the point to these two votes. We need to

give some consideration to making sure we understand how the process will go forward to a conclusion after that.

I thank my colleagues for their attention. I believe we are ready for the votes, Mr. Chief Justice.

VOTE ON MOTION TO DISMISS

The CHIEF JUSTICE. The question occurs on the motion to dismiss the impeachment proceedings offered by the Senator from West Virginia, Mr. BYRD. The yeas and nays are required.

The clerk will call the roll.

The assistant legislative clerk called the roll.

The result was announced—yeas 44, nays 56, as follows:

[Rollcall Vote No. 4]

[Subject: Byrd motion to dismiss the impeachment proceedings]

YEAS—44

Akaka	Edwards	Lieberman
Baucus	Feinstein	Lincoln
Bayh	Graham	Mikulski
Biden	Harkin	Moynihan
Bingaman	Hollings	Murray
Boxer	Inouye	Reed
Breaux	Johnson	Reid
Bryan	Kennedy	Robb
Byrd	Kerrey	Rockefeller
Cleland	Kerry	Sarbanes
Conrad	Kohl	Schumer
Daschle	Landrieu	Torricelli
Dodd	Lautenberg	Wellstone
Dorgan	Leahy	Wyden
Durbin	Levin	

NAYS—56

Abraham	Fitzgerald	McConnell
Allard	Frist	Murkowski
Ashcroft	Gorton	Nickles
Bennett	Gramm	Roberts
Bond	Grams	Roth
Brownback	Grassley	Santorum
Bunning	Gregg	Sessions
Burns	Hagel	Shelby
Campbell	Hatch	Smith (NH)
Chafee	Helms	Smith (OR)
Cochran	Hutchinson	Snowe
Collins	Hutchison	Specter
Coverdell	Inhofe	Stevens
Craig	Jeffords	Thomas
Crapo	Kyl	Thompson
DeWine	Lott	Thurmond
Domenici	Lugar	Voinovich
Enzi	Mack	Warner
Feingold	McCain	

The motion was rejected.

VOTE ON MOTION FOR APPEARANCE OF WITNESSES AND ADMISSION OF EVIDENCE

The CHIEF JUSTICE. Now the question occurs on the motion requesting the appearance of witnesses at depositions and to admit

evidence offered by the managers on the part of the House of Representatives. On this question, the yeas and nays are required, and the clerk will call the roll.

The legislative clerk called the roll.

The result was announced—yeas 56, nays 44, as follows:

[Rollcall Vote No. 5]

[Subject: House managers motion to subpoena witnesses and admit evidence not in record]

YEAS—56

Abraham	Fitzgerald	McConnell
Allard	Frist	Murkowski
Ashcroft	Gorton	Nickles
Bennett	Gramm	Roberts
Bond	Grams	Roth
Brownback	Grassley	Santorum
Bunning	Gregg	Sessions
Burns	Hagel	Shelby
Campbell	Hatch	Smith (NH)
Chafee	Helms	Smith (OR)
Cochran	Hutchinson	Snowe
Collins	Hutchison	Specter
Coverdell	Inhofe	Stevens
Craig	Jeffords	Thomas
Crapo	Kyl	Thompson
DeWine	Lott	Thurmond
Domenici	Lugar	Voinovich
Enzi	Mack	Warner
Feingold	McCain	

NAYS—44

Akaka	Edwards	Lieberman
Baucus	Feinstein	Lincoln
Bayh	Graham	Mikulski
Biden	Harkin	Moynihan
Bingaman	Hollings	Murray
Boxer	Inouye	Reed
Breaux	Johnson	Reid
Bryan	Kennedy	Robb
Byrd	Kerrey	Rockefeller
Cleland	Kerry	Sarbanes
Conrad	Kohl	Schumer
Daschle	Landrieu	Torricelli
Dodd	Lautenberg	Wellstone
Dorgan	Leahy	Wyden
Durbin	Levin	

The motion was agreed to.

The CHIEF JUSTICE. The Chair recognizes the majority leader.

Mr. LOTT. Mr. Chief Justice, as I indicated earlier, we are attempting now to clarify exactly how this will proceed and to reach agreement with regard to the remaining procedure and the beginning of the deposition process.

We are acting in good faith, but we want to make sure we are at least going to try to think about all contingencies, and we are exchanging resolutions and suggestions between Senator DASCHLE and myself at this time. We may be asked to vote later on today on a procedure. We will let you know if that is necessary today. It could happen tomorrow. But we don't want it to go much longer

than that because we need to make sure this procedure is going forward.

Of course, if we don't have a resolution, I presume we will begin to go forward anyway, but we would like to have some orderly procedure as we have had in the past. My thinking at this time is that we would just stand in recess subject to the call of the Chair while we talk this through. It may not be necessary to do anything further as far as a recorded vote but it may be. So we just wanted Senators to be on notice of that.

RECESS SUBJECT TO THE CALL OF THE CHAIR

Therefore, I ask unanimous consent, Mr. Chief Justice, that the Senate stand in recess subject to the call of the Chair.

There being no objection, at 1:33 p.m., the Senate recessed subject to the call of the Chair.

The Senate reassembled at 4:47 p.m. when called to order by the Chief Justice.

The CHIEF JUSTICE. The Chair recognizes the majority leader.

Mr. LOTT. Thank you, Mr. Chief Justice.

First, I thank all the Members, all concerned, for their patience throughout this process. We have had a productive day, and I believe this recess that we have been experiencing has been helpful in allowing further discussions to occur and to clarify what the procedures will be from here through the subpoena and deposition process and, hopefully, even to a conclusion.

Senator DASCHLE and I have traded proposals which outline those procedures for the remainder of the trial, and although I won't go into detail at this time, I will say that both proposals bring us to a final vote on the pending articles of impeachment in an expeditious manner. We have been narrowing the questions that are involved, and we are now working on what I hope will be the final draft. But it is not going to be possible to complete that this afternoon. We hope to be able to do it when we reconvene at 1 p.m. on Thursday.

There will be conferences of the two parties in the morning so that we can go over this with all the Senators. It is not enough just that the leaders understand or agree; we have to make sure every Senator understands it and agrees with the procedure that we would go forward with.

ADJOURNMENT UNTIL 1 P.M. TOMORROW

Mr. LOTT. I now ask unanimous consent that the Court of Impeachment stand in adjournment until the hour of 1 p.m. on Thursday.

There being no objection, at 4:47 p.m., the Senate, sitting as a Court of Impeachment, adjourned until Thursday, January 28, 1999, at 1 p.m.

AFFIDAVIT OF BARRY W. WARD

I, Barry W. Ward, do hereby testify that the following statements are true:

1. I am over the age of eighteen and competent to make this Affidavit and have personal knowledge of the facts stated herein.

2. I am a licenced attorney in the State of Arkansas and serve as one of three law clerks to United States District Judge Susan Webber Wright, Chief Judge for the Eastern District of Arkansas.

3. In my capacity as law clerk to Judge Wright, I was assigned, through random draw, the case of *Jones v. Clinton*, No. LR-C-94-290 (E.D.Ark.), and continue to remain so assigned.

4. On January 17, 1998, I attended the President's deposition with Judge Wright and was sitting at the conference table next to Judge Wright for the duration of the deposition. From my position at the conference table, I was able to observe the colloquy between Judge Wright and President Clinton's attorney, Robert S. Bennett, in which Mr. Bennett objected to certain questioning from James A. Fisher, Paula Jones' attorney, regarding Monica Lewinsky. In the course of his objection, Mr. Bennett made a statement to the effect that Ms. Lewinsky had filed an affidavit stating there was "absolutely no sex of any kind in any manner, shape or form, with President Clinton." From my position at the conference table, I observed President Clinton looking directly at Mr. Bennett while this statement was being made.

FURTHER AFFIANT SAYETH NOT.

Barry W. Ward

Barry W. Ward

ACKNOWLEDGMENT

STATE OF ARKANSAS
PULASKI COUNTY

SUBSCRIBED AND SWORN to before a Notary Public on this 25th day of January 1999.

Susan M. Haas

Notary Public

My Commission expires:

17 June 2002

DECLARATION OF T. WESLEY HOLMES

My name is T. Wesley Holmes. I am over twenty-one years of age and I am fully competent to give this Declaration.

1. I am an attorney licensed to practice law in the State of Texas, the State of Arkansas and before the United States District Court for the Eastern District of Arkansas, among other courts. My firm, Rader, Campbell, Fisher & Pyke, represented Paula Jones in the civil action styled and numbered *Jones v. Clinton, et al.*, Civil Action Number 94-CV-290, In the United States District Court for the Eastern District of Arkansas (the "Jones Case"). I was actively involved in representing Mrs. Jones in that case.

2. I attended the deposition of William Jefferson Clinton on January 17, 1998.

3. On January 22, 1998, I signed a subpoena for the deposition of Betty Currie, a true copy of which is attached hereto as Exhibit "A." Ms. Currie was served with this subpoena on January 27, 1998.

4. On January 23, 1998, I served on the defendants in the Jones Case "Plaintiff's Supplement To Witness List," a true copy of which is attached hereto as Exhibit "B."

5. We, Mrs. Jones' lawyers in the Jones Case, subpoenaed Ms. Currie to give her deposition for two reasons. First, the testimony given by Mr. Clinton in his January 17, 1998, deposition and second, we had received what we considered to be reliable information that Ms. Currie was instrumental in facilitating Monica Lewinsky's meetings with Mr. Clinton and that Ms. Currie was central to the "cover story" Mr. Clinton and Ms. Lewinsky had developed to use in the event their affair was discovered.

6. I have been told that it has been suggested that the reason we subpoenaed Ms. Currie was a *Washington Post* article. This suggestion is incorrect. No *Washington Post* article played any part in my decision that we should subpoena Ms. Currie. Moreover, I do not recall any attorney in my firm saying anything about a *Washington Post* article in the discussions in which we decided to subpoena Ms. Currie.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 23, 1999.

T Wesley Holmes

T. Wesley Holmes

AO 88 (Rev.1/94)Subpoena in a Civil Case

Issued by the
UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

PAULA JONES,
Plaintiff,
v.
WILLIAM JEFFERSON CLINTON
and
DANNY FERGUSON,
Defendants.

SUBPOENA IN A CIVIL CASE
CASE NUMBER:[1] LR-C-94-290
In the United States District Court
For the Eastern District of Arkansas

ORIGINAL

TO: **BETTY CURRIE**
1600 Pennsylvania Ave., NW
Washington, D.C.

☐ YOU ARE COMMANDED to appear in the United States District Court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

☒ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME
The Rutherford Institute 733 15th Street N.W., Suite 410 Washington, D.C. 20005	January 29, 1998 3:00 p.m. ET

☐ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

PLACE	DATE AND TIME

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person designated, the matters on which the person will testify, Federal Rules of Civil Procedure, 30(b) (6).

ISSUING OFFICER SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)	DATE
T Wesley Holmes, ATTORNEY FOR PLAINTIFF	January 22, 1998

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER
T. Wesley Holmes, Rader, Campbell, Fisher & Pyke, Stemmons Place, Suite 1080,
2777 Stemmons Freeway, Dallas, Texas 75207, (214) 630-4700

(See Rule 45, Federal Rules of Civil Procedure, Parts C & D on Reverse)

[1] If action is pending in district other than district of issuance, state district under case number.

EXHIBIT
A

AO 88 (Rev.1/94)Subpoena in a Civil Case

PROOF OF SERVICE

	Date	Place
SERVED	01/27/98 TIME 7:42 P.M.	1604 NORTH CLEVELAND STREET ARLINGTON, VA 22201

SERVED ON (PRINT NAME)	MANNER OF SERVICE
BETTY CURRIE	PERSONALLY
SERVED BY (PRINT NAME)	**TITLE**
DAVID S. FELTER	PRIVATE PROCESS SERVER

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on 02/03/98
Date

Signature of Server

CAPITOL PROCESS SERVICES
1827 18TH STREET, N.W.
WASHINGTON, D.C. 20009
(202) 667-0050
Address of Server

Rule 45, Federal Rules of Civil Procedure, Parts C & D:

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction which may include, but is not limited to, lost earnings and reasonable attorney's fees.

(2)(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting form the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena, or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

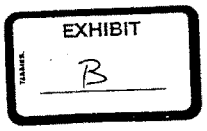
IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

PAULA JONES,	§	
	§	
Plaintiff,	§	
	§	
v.	§	CIVIL ACTION NO. LR-C-94-290
	§	
WILLIAM JEFFERSON CLINTON and DANNY FERGUSON,	§	Judge Susan Webber Wright
	§	
	§	
Defendants.	§	(Under Seal)

PLAINTIFF'S SUPPLEMENT TO WITNESS LIST

Plaintiff Paula Jones hereby supplements her December 5, 1997 witness list. In addition to the persons previously designated, Plaintiff designates the following potential witnesses whose identities were unknown to plaintiffs on December 5, 1997:

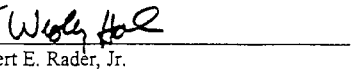
151.	Sherri Butler	Little Rock, Arkansas
152.	Dr. Sam Houston	Little Rock, Arkansas
153.	Shelia D. Lawrence	San Diego, California
154.	Lucia Wyman	White House, Washington, DC
155.	Vince Kraeger	Boca Raton, Florida
156.	Selma Edelman	Los Angeles, California
157.	Custodian of records for Speed Service, Inc.	Washington, D.C.
158.	Custodian of records for O'Melveny and Myers, L.L.P.	New York, New York



159.	Phillip D. Yoakum	Rogers, Arkansas
160.	Vernon Jordan	Washington, D.C.
161.	MacAndrews & Forbes custodian of records and Rule 30(b)(6) representative	New York, New York
162.	U.S. Department of Defense custodian of records and Rule 30(b)(6) representative	Arlington, Virgina
163.	Betty Currie	Washington, D.C.
164.	Marsha Scott	Washington, D.C.
165.	Debbie Schiff	Washington, D.C.
166.	Barry Spivey	Little Rock, Arkansas
167.	Bill Richardson	New York, New York
168.	Revlon, Inc. custodian of records and Rule 30(b)(6) representative	New York, New York

Additionally, Witness no. 80 on the original list was incorrectly identified as Monica Lewisky, but whose correct name is Monica S. Lewinsky.

Respectfully submitted,



Robert E. Rader, Jr.
State Bar of Texas No. 16453000
Donovan Campbell, Jr.
State Bar of Texas No. 03725300
James A. Fisher
State Bar of Texas No. 07051650
David M. Pyke
State Bar of Texas No. 16419700
T. Wesley Holmes
State Bar of Texas No. 09908495
J. McCord Wilson
State Bar of Texas No. 00785266

RADER, CAMPBELL, FISHER & PYKE
(A PROFESSIONAL CORPORATION)
Stemmons Place, Suite 1080
2777 Stemmons Freeway
Dallas, Texas 75207
Telephone: (214) 630-4700
Facsimile: (214) 630-9996

ATTORNEYS FOR PLAINTIFF
PAULA JONES

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Post Office Box 7482
1445 East Rio Road
Charlottesville, Virginia 22906-7482
Telephone: (804) 978-3888
Facsimile: (804) 978-1789

CERTIFICATE OF SERVICE

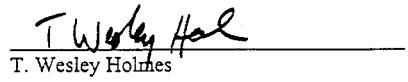
I hereby certify that on January 23, 1998, a true and correct copy of the foregoing document was served on all parties by service on their counsel of record at the addresses set forth below, in compliance with FED. R. CIV. P. 5.

Robert S. Bennett
Skadden, Arps, Slate, Meagher & Flom LLP
1440 New York Avenue, N.W.
Washington, D.C. 20005-2111

Kathlyn Graves
Wright, Lindsey & Jennings
200 West Capitol Avenue
Suite 2200
Little Rock, Arkansas 72201

Stephen Engstrom
Wilson, Engstrom, Corum, Dudley & Coulter
809 West Third Street
Little Rock, Arkansas 72202

Bill W. Bristow
216 East Washington
Jonesboro, Arkansas 72401



T. Wesley Holmes

CALLS FOR 202 4566566

ORIG #			CARRIER	TERM #		CONNECT	MIN	SEC	DATE
202	562	3002		202	456	6566	08:34	2	971206
202	965	6355		202	456	6566	12:02	2	35	971206
202	562	3004		202	456	6566	15:09	0	1	971215
202	562	3004		202	456	6566	09:31	0	39	971215
202	562	3004		202	456	6566	10:22	0	17	971215
202	562	3004		202	456	6566	12:03	0	38	971215
202	562	3004		202	456	6566	12:35	0	24	971215
202	562	0879		202	456	6566	09:35	1	7	971219
202	789	7727		202	456	6566	17:09	0	14	971219
202	274	1111		202	456	6566	17:09	0	14	971219
202	274	1111		202	456	6566	13:01	7	11	980106
202	562	3002		202	456	6566	13:57	0	17	980106
201	919	1111		202	456	6566	15:57	0	4	980106
201	919	1111		202	456	6566	16:03	0	10	980106
			222	202	456	6566	15:45	26	3	980107
202	274	1111		202	456	6566	08:38	9	23	980116
202	393	9035		202	456	6566	16:20	0	59	980116
202	393	5749		202	456	6566	11:55	0	0	980117
			222	202	456	6566	12:04	0	14	980121
			022	202	456	6566	13:28	3	14	980121

MONTH	DAY	COUNT
01	06	4
01	07	1
01	16	2
01	17	1
01	21	1
12	06	3
12	15	4
12	19	2
TOTAL		19

END OF 202 4566566

CALLS FOR 202 4946593

ORIG #			CARRIER	TERM #		CONNECT	MIN	SEC	DATE
MONTH	DAY			COUNT					
TOTAL				0					

Betty Currie # (456) 2990

END OF 202 4946593

CALLS FOR 202 4562990

ORIG #			CARRIER	TERM #		CONNECT	MIN	SEC	DATE
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			555	202	456	2990	09:45	1	4	971205
202	342	0444		202	456	2990	09:56	1	20	971205
202	331	2093		202	456	2990	10:05	3	31	971205
202	986	0564		202	456	2990	10:06	0	14	971205
703	403	1111		202	456	2990	10:10	0	51	971205
202	628	3706		202	456	2990	10:39	0	17	971205
202	342	0444		202	456	2990	10:47	0	5	971205
			833	202	456	2990	10:56	2	1	971205
617	437	0005		202	456	2990	11:03	1	6	971205
202	986	0564		202	456	2990	11:25	0	39	971205
202	737	9274		202	456	2990	11:49	0	33	971205
202	324	0444		202	456	2990	12:46	0	13	971205
202	726	3023		202	456	2990	12:48	0	42	971205
202	965	6355		202	456	2990	13:31	0	10	971205
202	965	6355		202	456	2990	13:24	0	15	971205
202	986	0564		202	456	2990	12:44	1	15	971205
			022	202	456	2990	14:01	0	15	971205
213	679	8155		202	456	2990	14:07	4	3	971205
202	965	6355		202	456	2990	16:15	2	31	971205
202	965	6355		202	456	2990	16:43	0	43	971205
202	965	6355		202	456	2990	16:03	0	4	971205
202	965	6355		202	456	2990	16:21	0	3	971205
202	965	6355		202	456	2990	16:34	0	31	971205
202	965	6354		202	456	2990	16:36	0	3	971205
			022	202	456	2990	17:08	0	56	971205
			022	202	456	2990	18:08	2	39	971205
			231	202	456	2990	18:25	1	40	971205
			022	202	456	2990	18:41	2	0	971205
			022	202	456	2990	19:19	0	5	971205
202	965	6355		202	456	2990	08:41	0	0	971206
202	965	6355		202	456	2990	08:57	0	17	971206
703	403	1111		202	456	2990	09:11	0	17	971206
703	403	1111		202	456	2990	09:19	0	21	971206
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SENATOR BYRD'S FINEST HOUR

Mr. HOLLINGS. Mr. Chief Justice, on behalf of myself, Senator STEVENS and Senator DODD: George Santayana stated, "Those who disregard the lessons of history are bound to repeat them." The United States Senate is too politically charged and it would be more so were it not for the distinguished Senator from West Virginia, ROBERT C. BYRD. A couple of weeks ago the Senate was about to go over the precipice of partisanship. Fortunately, we agreed to have an off-the-record session of all Senators. That alone would not have prevented our reckless course, but it did give all Senators an opportunity to hear Senator BYRD at his finest hour. He commenced by thanking Senator DANIEL AKAKA for leading us in prayer, harkening the time Benjamin Franklin took to the floor of the Continental Convention to call on divine guidance for cooperation and bipartisanship. Then Senator BYRD continued to calm partisan zeal and give us all a sense of historic perspective. We started talking sense instead of politics. It got us together. We could have gone the way of the House, but Senator BYRD is the one who put us on the right path. In appreciation for his leadership, we think the country could benefit by reading Senator BYRD's comments. I ask that the full text of Senator BYRD's remarks be printed in the RECORD.

The remarks follow:

REMARKS OF SENATOR ROBERT C. BYRD—BIPARTISAN CONFERENCE IN THE OLD SENATE CHAMBER, JANUARY 8

My colleagues, I thank the Majority Leader and the Minority Leader for bringing us together in this joint caucus. Mr. Daschle asked me last evening to be prepared to speak this morning following the remarks of the two leaders. I am flattered and honored to do so. Having a proclivity to speak at length on subjects that are close to my heart and about which I feel deeply, I have taken the precaution this morning to prepare some remarks in order that I might present them in an organized fashion and thus avoid speaking as long as I might otherwise be wont to do. I shall, however, add some extemporaneous remarks as the spirit of the occasion leads me.

Before proceeding with the thoughts that I have put in writing, I wish to remind ourselves that we do, indeed, have not only the standing rules of the Senate, but we also have the standing rules for our guidance in impeachment trials. This bound copy of rules governing impeachment trials that I hold in my hand was published in 1986 as a result of a resolution which former Senator Robert Dole and I offered for referral to the Rules Committee, at which time we called on that Committee to update and provide any proposed modifications or revisions to the rules that had been in existence from the year 1868 when the impeachment trial of President Andrew Johnson took place.

The rules which the Senate approved in 1986 were followed during the impeachment trials of the three Federal judges: Claiborne, Hastings, and Walter Nixon. In listening to some of the comments on television last evening, I noted that when news reporters interviewed tourists, those visitors to this city were under the impression that the Senate was proceeding into a trial without any rules for guidance. Some of the representatives of the news media were also under this mistaken impression. I am concerned about the public perception that we are proceeding to a trial without any rules to guide us. Therefore, I trust that we will all make it clear as we work with the press that the Senate, indeed, has a set of standing rules to guide us in this trial.

Before I begin my prepared remarks, I wish to thank the Majority Leader and the Minority Leader for calling on Senator Akaka to deliver prayer. They chose the right Senator to lead us in prayer, and I thank Danny. His prayer set just the right tone and the right spirit for his occasion. In the midst of Danny's prayer, I recalled that day which came during the Constitutional Convention in Philadelphia, when the Framers were encountering difficult problems, and their spirits were at a low ebb. There was dissension and divisiveness, and their hopes for success in achieving

their goal were fading. Things seemed to be falling apart. Their dreams of fashioning a new Constitution—the Articles of Confederation being our first national Constitution—appeared to be growing dim. The new Ship of State which they hoped to launch was floundering in troubled waters with rocks and shoals upon every hand. Dark clouds of despair were closing in upon them, and the Framers were brought face-to-face with the stark possibility of failure.

It was then, at that fateful moment, that the oldest man at the Convention, Benjamin Franklin, stood to his feet and addressed the chair in which sat General George Washington: "Sir, I have lived a long time, and the longer I live the more convincing proofs I see that God still governs in the affairs of men. And if a sparrow cannot fall to the ground without our Father's notice, is it probable that we can build an empire without our Father's aid? We have been assured, sir, in the sacred writings, that, 'Except the Lord build the house, they labor in vain that build it; except the Lord keep the city, the watchman waketh but in vain.' I firmly believe this; and I also believe that without our Father's aid, we shall succeed in this political building no better than did the builders of Babel. I, therefore, beg leave, sir, to move that, henceforth, prayers imploring the assistance of heaven and its blessings on our deliberations be held in this assembly every morning before we proceed to business, and that one or more of the clergy of this city be requested to officiate in that service."

Franklin's motion was seconded by Mr. Sherman.

My colleagues, let us proceed in these deliberations this morning in a spirit of prayerfulness and cooperation and bipartisanship, and see if we, too, in our generation may produce something worthy of being remembered.

I speak from the viewpoint of having a long and varied experience in legislative bodies. I was born during the Woodrow Wilson Administration. I was sworn in as a new member of the House of Representatives during the final days of the Truman Administration. He is my favorite Democratic President in my lifetime. I having been sworn in as a new member of Congress in January 1953, I have served longer in Congress than has any man or woman in either House of Congress today. Dizzy Dean said that it is alright to brag if you've done it. Well I have done it! No member of Congress in either House today was here when I first became a member 46 years ago.

I also try to take the long view of the history that is yet before us. This country has a long history ahead of it, and the things we do here, the service we perform, our words and our deeds will be long remembered and long recorded.

As we proceed to the unpleasant task that awaits us in the days ahead, let us remember that this is not a trial in a court of law. It is not a criminal trial. It is a political trial. The Nation will be watching us, and I implore us all to conduct ourselves in a way that will bring honor to this body. I view the immediate future with considerable dread. There is a poison in the air, and it is not the flu virus, and there is no antibiotic that can be prescribed for it. It is a bitter political partisanship, and if we let it control us in the impeachment trial, we will find it to be lethal, and we will die together.

From time to time there occur events which rise above the everyday, and sorely test the leaders of men and the institutions they create.

This is such a time. For it is not only William Jefferson Clinton who is on trial. It is this August body and all of us who carry the title of Senator.

The White House has sullied itself. The House of Representatives has fallen into the black pit of partisan self-indulgence. The Senate is teetering on the brink of that same black pit.

Meanwhile, the American people look in vain for the order and leadership promised to them by the Constitution. Of one thing I am sure: the public trust in all of the institutions of government has severely suffered.

Senators, this is the headline, I had so hoped we could avoid. I have in my hand this morning's Washington Times bearing the headline: "Trial Opens Amid Pomp, Partisanship." It is the word "partisanship" that is troubling.

Any of you who have read your mail or the phoned-in comments from your constituents knows that the anger and disappointment is only growing in intensity with each day that we prolong this painful ordeal.

I have always believed that whatever the crisis and whatever the age, the Senate would always attract and produce men and women of the quality and character needed to step up and calm the angry and dangerous seas which might threaten the Ship of State, and dash it on the rocks and shoals.

I still believe that. I still believe that the Senate can restore some order to the anger which has overtaken this country and the chaos which threatens this city. I believe in all of you. I believe that all of the courage and conviction needed to handle any crisis is present right in this room.

But, at this moment, we look very bad. We appear to be dithering and posturing and slowly disintegrating into the political quicksand. And it is no fault of our leaders. Our two leaders have done their level best to get us started toward lancing this inflamed boil in an honorable and orderly way. Left alone, without all of us to contend with, they would have worked these arrangements out long ago.

Of course, I am very fond and proud of my own Leader, Tom Daschle. But, may I say to my Republican friends that I am also very fond and proud of our Majority Leader, Mr. Lott. However, I have been a Majority Leader in this body, and I know too well who gets the blame when important matters flounder in the Senate. It is the Majority Leader and, to a lesser degree, the Minority Leader. And when that happens, neither party looks good.

I feel it to be appropriate at this point to digress from my prepared statement and bring to your recollection Chaucer's "Canterbury Tales," and I shall refer to the "Pardoner's Tale," which most, if not all, of you will remember having read in your school days. The setting took place in Flanders, where, once, there sat drinking in a tavern three young men who were given to folly. As they sat, they heard a small bell clink before a corpse being carried to the grave, whereupon, one of them called to his knave and ordered him to go and find out the name of the corpse that was passing by.

The boy answered that he already knew, and that it was an old comrade of the roisterers who had been slain while drunk by an unseen thief called Death, who had slain others in recent days.

Out into the road the three young ruffians went in search of this monster called death. They came upon an old man, and seized him and with rough language demanded that he tell them where they could find this cowardly adversary who was taking the lives of their good friends in the countryside.

The old man pointed to a great oak tree on a nearby knoll, saying, "There, under that tree, you will find Death." In a drunken rage, the three roisterers set off in a run 'til they came to the tree, and there they found a pile of gold—eight basketfuls, of florins, newly minted, round coins. Forgotten was the monster called Death, as they pondered their good fortune, and they decided that they should remain with the gold until nightfall when they would divide it among themselves and take it to their homes. It would be unsafe, they thought, to attempt to do so in broad daylight, as they might be fallen upon by thieves who would take their treasure from them.

It was proposed that they draw straws, and the person who drew the shortest cut would go into the nearby village and purchase some bread and wine which they could enjoy as they whiled away the daylight hours. Off towards the village the young man went. When he was out of sight, the remaining two decided that there was no good reason why this fortune should be divided among three individuals, so one of them said to the other: "When he returns, you throw your arm around him as if in jest, and I will rive him with my dagger. And, with your dagger, you can do the same. Then, all of this gold will be divided just between you and me."

Meanwhile, the youngest rouge, as he made its way into the town, thought what a shame it was that the gold would be divided among three, when it could so easily belong only to the ownership of one. Therefore, in town, the young man went directly to an apothecary and asked to be sold some poison for large rats and for a polecat that had been killing his chickens. The apothecary quickly provided some poison, saying that as much as equalled only a grain of wheat would result in sudden death for the creature that drank the mixture.

Having purchased the poison, the young villain crossed the street to a winery where he purchased three bottles—two for his friends, one for himself. After he left the village, he sat down, opened two bottles and deposited an equal portion in each, and then returned to the oak tree, where the two older men did as they had planned. One threw his arm playfully around the shoulders of the third, they buried their daggers in him, and he fell dead on the pile of gold. The other two then sat down, cut the bread and opened the wine. Each took a good, deep swallow, and, suffering a most excruciating pain, both fell upon the body of the third, across the pile of gold. All three were dead.

Their avarice, their greed for gain had destroyed them. There is a lesson here. The strong temptation for political partisanship can tear the Senate apart, and can tear the Nation apart, and confront all of us with destruction.

I ask everyone here who might be tempted, to step back from the brink of political gamesmanship. I ask everyone here who might harbor such feelings to abandon any thought of mean-spirted, destructive, vengeful, partisan warfare. It is easy to get caught up in the poison of bitter, self-consuming partisanship when faced with such situations as the one which confronts us now.

Witnesses are the main sticking point. I try to put myself in the shoes of our GOP friends. At least 13 House members are pushing you.

They had the opportunity to call witnesses but didn't. I watched all House proceedings. It seems to me that with such a mass of evidence, nothing new will be added. We must avoid a repetition of what the House has just gone through.

I urge all of us to step back and think about it. What can possibly be served in this unique court of impeachment by having a repeat of what we have already seen?

I implore us all to endeavor to lift our eyes to higher things. We can perform some much needed healing on the body politic. We can start by disdaining any more of the salacious muck which has already soiled the gowns of too many. If we can come together in a dignified way to orderly and expeditiously dispose of this matter, then perhaps we can yet salvage a bit of respect and trust from the American people for all of us, for the Senate, and for their institutions of government.

There have been only 1,851 Senators from the beginning of this Republic, and that includes all of us. We have a duty at this critical time to rise above politics-as-usual, in which we eat one another and, in so doing, eat ourselves. Let us put the nation first. The American people want us to do that. In the long run, that is how we will be judged, and, more importantly, it is how the Senate will be judged. The Constitution makes no reference to political party. The constitutional provision concerning impeachment makes no mention of political party. There were no political parties at the time the Constitution was written.

When this is all over and this matter is behind us—and that time will surely come—then we can be politically partisan if we wish, as various legislative matters come before us. That is all in the natural course of things. Republicans and Democrats can go at each others throats politically if that is what they desire. But this is not a time for political partisanship. We will be sitting in judgment of a President. And we should be guided by our oath that, in all things appertaining to the trial of William Jefferson Clinton, we shall do impartial justice according to the Constitution and the laws.

Let us be guided by higher motives, by what is best for the Republic, and by how future history will judge us. We need a surer foundation than political partisanship, and that sure foundation is the Constitution.

The Senate was the preeminent spark of genius by the Framers. It was here that passions would be cooled. The Senate would be the stabilizing element when confronted with the storms of political frenzy and the silent arts of corruption.

Let us be true to the faith of our fathers and to the expectations of those who founded this Republic. The coming days will test us. Let us go forward together, hoping that in the end, the Senate will be perceived as having stood the test. And may we—both Republicans and Democrats—when our work is done, be judged by the American people and by the pages of future history as having done our duty and done it well. Our supreme duty is not to any particular person or party, but to the people of the Nation and to the future of this Republic.

It is in this spirit that we may do well to remember the words of Benjamin Hill, a great United States Senator from the State of Georgia, inscribed, as they are, upon his monument:

Who saves his country
Saves all things,
Saves himself
and all things saved do bless him.

Who lets his country die
Let's all things die,
Dies himself ignobly,
And all things dying curse him.

Thank you, my friends, thank you.

MOTION TO DISMISS ARTICLES OF IMPEACHMENT AGAINST WILLIAM JEFFERSON CLINTON

Mr. ABRAHAM. Mr. Chief Justice, I rise to oppose the motion offered in the Court of Impeachment to dismiss the articles of impeachment against President Clinton. To support the motion would undermine the precedents and history of the impeachment process laid out in the Constitution. To my knowledge, the only instances in our history that the Senate has dismissed a resolution of impeachment without voting up or down on at least one of the articles

sent over by the House was when the impeached officer resigned before the Senate had the opportunity to act. I do not think we should deviate from our precedents on this occasion.

In voting on the motion to dismiss, we are supposed to assume that even if the President did everything the House claims he did, we should still dismiss the articles. So for purposes of this motion, we have to assume that he committed every act of obstruction of justice and witness tampering the House has claimed and every instance of perjury before the grand jury that the House claims. This would include perjury before a grand jury sitting to help the Congress determine whether the President committed impeachable offenses.

Mr. Chief Justice, I have by no means decided whether President Clinton has done everything the House alleges. But if I am to assume all these allegations are correct, I cannot see how in good conscience I can support the motion to dismiss and permit the President to stay in office.

SUPPORT OF THE MOTION TO DISMISS THE ARTICLES OF IMPEACHMENT AGAINST PRESIDENT CLINTON

Mr. LIEBERMAN. Mr. Chief Justice, each Member of the Senate is obligated today to render a judgment, a profound judgment, about the conduct of President William Jefferson Clinton and the call of the House of Representatives to remove him from office. A motion to dismiss the two articles of impeachment lodged against the President has been put before us, and so we must now determine whether there are sufficient grounds to continue with the impeachment trial, or whether we know enough to reach a conclusion and end these proceedings.

I know enough from the record the House forwarded to us and the public record to reach certain conclusions about the President's conduct. President Clinton had an extramarital sexual relationship with a young White House employee, which, though consensual, was reckless and immoral, and thus raised a series of questions about his judgment and his respect for the office. He then made false and misleading statements about that relationship to the American people, to a Federal district court judge in a civil deposition, and to a Federal grand jury; in so doing, he betrayed not only his family but the public's trust, and undermined his public credibility.

But the judgment we must now make is not about the rightness or wrongness of the President's relationship with Monica Lewinsky and his efforts to conceal it. Nor is that judgment about whether the President is guilty of committing a specific crime. That may be determined by a criminal court, which the Senate clearly is not, after he leaves office.

The question before us now is whether the President's wrongdoing—as outlined in the two articles of impeachment—was more than reprehensible, more than harmful, and in this case, more than strictly criminal. We must now decide whether the President's wrongdoing makes his continuance in office a threat to our Government, our people, and the national interest. That to me is the extraordinarily high bar the framers set for removal of a duly-elected

President, and it is that standard we must apply to the facts to determine whether the President is guilty of "high crimes and misdemeanors."

This trial has now proceeded for 10 session days. Each side has had ample opportunity to present its case, illuminating the voluminous record from the House, and we Senators have been able to ask wide-ranging questions of both parties. I have listened intently throughout, and both the House managers and the counsel for the President have been very impressive. The House managers, for their part, have presented the facts and argued the Constitution so effectively that they impelled me more than once to seriously consider voting for removal.

But after much reflection and review of the extensive evidence before us, of the meaning of high crimes and misdemeanors, and, most importantly, of what I believe to be in the best interests of the Nation, I have concluded that the facts do not meet the high standard the founders established and do not justify removing this President from office.

It was for this reason that I decided today to vote in favor of dismissing the articles of impeachment against President Clinton, and against the motion to allow for the testimony of live witnesses. I plan to submit a more detailed statement explaining exactly how I arrived at these decisions when the final votes are taken on the articles of impeachment. But I do think it is important at this point to summarize my arguments for voting to end the trial now.

I start from the indisputable premise that the founders intended impeachment to be a measure of extreme last resort, because it would disrupt the democratic process they so carefully calibrated and would supersede the right of the people to choose their leaders, which was at the heart of their vision of the new democracy they were creating. That is why I believe that the Constitutional standard in question here—"high crimes and misdemeanors"—demands clear and convincing evidence that the President committed offenses that, to borrow from the words of Alexander Hamilton and James Madison respectively, proceed from "the abuse or violation of some public trust," and that demonstrate a "loss of capacity or corruption." A review of the constitutional history convinces me that impeachment was not meant to supplant the criminal justice system but to provide a political remedy for offenses so egregious and damaging that the President can no longer be trusted to serve the national interest.

The House managers therefore had the burden of proving in a clear and convincing way that the behavior on which the articles of impeachment are based has irreparably compromised the President's capacity to govern in the Nation's best interest. I conclude that, as unsettling as their arguments have been, they have not met that burden.

I base that conclusion in part on the factual context of the President's actions. As the record makes abundantly clear, the President's false and misleading statements under oath and his broader deception and coverup stemmed directly from his private sexual misconduct, something that no other sitting American president to my knowledge has ever been questioned about in a legal setting. On each occasion when I came close to the brink of deciding to vote

for one of the articles of impeachment, I invariably came back to this question of context and asked myself: Does this sordid story justify, for the first time in our Nation's history, taking out of office the person the American people chose to lead the country? Each time I answered, "no."

The record shows that the President was not trying to conceal public malfeasance or some heinous crime, like murder. And I believe that distinction, while not determinative, does matter. The American people, according to most public surveys, also think that distinction matters—which helps us to understand why the overwhelming majority of them can simultaneously hold the views that the President has demeaned his office and yet should not be evicted from it.

In noting this, I recognize that it would be a dereliction of our duty to substitute public opinion polls for our reasoned judgment in resolving this constitutional crisis. But it would also be a serious error to ignore the people's voice, because in exercising our authority as a Court of Impeachment we are standing in the place of the voters who re-elected the President 2 years ago.

In this case, the prevailing public opposition to impeachment has particular relevance, for it provides substantial evidence that the President's misconduct, while harmful to his moral authority and his personal credibility, has not been so harmful as to shatter the public's faith in his ability to fulfill his Presidential duties and act in their interest. Nearly two-thirds of them say repeatedly that they approve of the job that President Clinton is doing and that they oppose his removal, which means that, though they are deeply disaffected by his personal behavior, they do not believe that he has lost his capacity to govern in the national interest.

In reaching my conclusion, I first had to determine that the request of the House managers to bring witnesses to the floor would not add to the record and the arguments that have been made, or change my conclusion or the outcome of this trial, which most Senators and observers agree will not end in the President's removal. It is true that witnesses may add demeanor evidence, but they will subtract from the Senate's demeanor, and unnecessarily extend the trial for some time, preventing the Senate from returning to the other pressing business of the Nation.

Am I content to have this trial end in the articles failing to receive the required two-thirds vote of the Senate for removal? The truth is that nothing about this terrible national experience leaves me comfortable. But an unequivocal, bipartisan statement of censure by Congress would, at least, fulfill our responsibility to our children and our posterity to speak to the common values the President has violated, and make clear what our expectations are for future Presidents. Such a censure would bring better closure to this demeaning and divisive episode, and help us begin to heal the injuries the President's misconduct and the impeachment process' partisanship have done to the American body politic, and to the soul of the Nation.

MOTION TO TAKE DEPOSITIONS OF WITNESSES IN COURT OF IMPEACHMENT OF WILLIAM JEFFERSON CLINTON

Mr. ABRAHAM. Mr. Chief Justice, there is a lot about this impeachment process that is new and unfamiliar to all of us. That is all the more reason why we should allow ourselves to be guided by the Constitution and historical precedents in deciding how we proceed. The Constitution's requirement that the Senate "shall have the sole Power to try all Impeachments" certainly suggests that the Senate will ordinarily do more than simply look at the record made by the House in deciding whether to send us articles of impeachment, and that has generally been the Senate's practice.

Moreover, the Senate sitting as a Court of Impeachment is charged with seeking the truth in this trial. If any Senators reasonably believe that hearing witnesses would assist in finding the truth, then I believe both the President and the House should have the opportunity to call witnesses. Based on the record before us and the arguments we have heard, it is clear that at least on some of the House's charges, there are factual issues in dispute that the witnesses whom this motion proposes to subpoena for depositions could help us resolve.

It is for this reason, Mr. Chief Justice, that I support the motion to allow both sides to depose these three witnesses. I do not see why this limited discovery should in any way cause this matter to be drawn out for any extended period of time. Rather, I believe it can be conducted very expeditiously without in any way jeopardizing the Senate's ability to conduct other important legislative business.

THURSDAY, JANUARY 28, 1999

[From the Congressional Record]

The Senate met at 1:04 p.m. and was called to order by the Chief Justice of the United States.

TRIAL OF WILLIAM JEFFERSON CLINTON, PRESIDENT OF THE UNITED STATES

The CHIEF JUSTICE. The Senate will convene as a Court of Impeachment. The Chaplain will offer a prayer.

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Almighty God, thank You for the gift of vibrant confidence based on vital convictions. We are confident in Your unlimited power. Therefore, at no time are we helpless or hapless. Our confidence is rooted in Your Commandments. Therefore, we are strengthened by Your absolutes that give us enduring values. Our courage is based on the assurance of Your ever-present, guiding Spirit. Therefore, we will not fear. Our hope is rooted in trust in Your reliability. Therefore, we will not be anxious. Your interventions in trying

times in the past have made us hopeful thinkers for the future. Therefore, we trust You.

You have called us to glorify You in the work here in this Senate. Therefore, we give You our best for this day's responsibilities. You have guided our beloved Nation through difficult periods of discord and division in the past. Therefore, we ask for Your help in the present deliberations of the impeachment trial. Thank You for the courage that flows from our unshakable confidence in You. Through our Lord and Saviour. Amen.

The CHIEF JUSTICE. Senators will be seated. The Sergeant at Arms will make the proclamation.

The Sergeant at Arms, James W. Ziglar, made proclamation as follows:

Hear ye! Hear ye! Hear ye! All persons are commanded to keep silent, on pain of imprisonment, while the Senate of the United States is sitting for the trial of the articles of impeachment exhibited by the House of Representatives against William Jefferson Clinton, President of the United States.

THE JOURNAL

The CHIEF JUSTICE. If there is no objection, the Journal of proceedings of the trial is approved to date.

The Chair recognizes the majority leader.

ORDER OF PROCEDURE

Mr. LOTT. For the information of all of our colleagues—obviously, they have already received the word by the fact that they are not all present—but we are still attempting to reach an agreement with respect to the remaining procedures for the trial, particularly with regard to how and when the depositions will be taken.

We have been making progress, but it is something we need to be careful about. Hopefully, we will be able to reach an agreement yet today. If agreement is reached, I expect it very likely that a rollcall vote would be requested on that agreement and, therefore, all Members should be aware of that. We will notify them via the hotline system as the voting schedule becomes clear. Certainly we will keep the Chief Justice informed of our deliberations and when we anticipate the need to reconvene.

RECESS

Mr. LOTT. But in view of the continuing negotiations and conferences that are meeting at this time, I ask unanimous consent the Senate stand in recess until the hour of 2 p.m. today.

There being no objection, at 1:07 p.m., the Senate recessed until 2:02 p.m.; whereupon, the Senate reassembled when called to order by the Chief Justice.

The CHIEF JUSTICE. The Chair recognizes the majority leader.

Mr. LOTT. Thank you, again, Mr. Chief Justice.

ORDER OF PROCEDURE

Mr. LOTT. Mr. Chief Justice, in an effort to get an agreement on how to proceed, it is very important that all parties are aware of the procedures that we are outlining and that those include Sen-

ators on both sides of the aisle, the House managers, the White House, the attorneys for the witnesses. So it does take time.

Just as we were prepared to come in at 2 and move to a resolution, questions were raised about a couple specific points. We believe those questions need to be clarified for certainty. Rather than continue to recess hour to hour, which I know is not fair to the Chief Justice, I think it would be better at this point to make sure Senators are aware that we are working to get an agreement on this procedure. We need to get that done today so the depositions can get underway with the attorneys consulting with their clients Friday and Saturday. Hopefully, the depositions will begin on Sunday and Monday and be completed by Tuesday. But we are working on the details of that.

This still could very well require a vote or two today or even tomorrow. But we will make that announcement once it is clear that it is going to take a recorded vote of one or more and exactly how that would work.

We will keep the Chief Justice notified of the expected timeframe and, as information becomes available, as to exactly when we will come back into session, and whether or not or how many votes will be required. We will get that information to Senators.

RECESS SUBJECT TO THE CALL OF THE CHAIR

Mr. LOTT. In view of all that, I ask unanimous consent that the Senate stand in recess subject to the call of the Chair.

There being no objection, at 2:03 p.m., the Senate recessed subject to the call of the Chair.

The Senate reassembled at 5:31 p.m., when called to order by the Chief Justice.

The CHIEF JUSTICE. The majority leader is recognized.

Mr. LOTT. Thank you, Mr. Chief Justice.

I thought we were ready to proceed. I see Senator DASCHLE is not on the floor. He should be back momentarily. Maybe I can explain a few details. He is returning now. We may still need a little more time.

We thank you for your patience, and our colleagues on both sides for their patience, as we have tried to work through the details of these resolutions and how to proceed with the depositions. There are a lot of details to it and everybody needs to be relatively comfortable that they understand how it will work. That is why it has taken this additional time.

I think we are to the point where we are ready to proceed. I believe the way it will proceed is that we will have a resolution which I will send to the desk, followed by a substitute from Senator DASCHLE. Then Senator DASCHLE has indicated that they may want to have a motion to go straight to the articles of impeachment. That would require three votes. Then we also, at that point, would make it clear the depositions would begin on Monday, the 1st. It is our intent to then go to those three votes. I also understand that the parties are willing to waive the debate time on these issues.

With that explanation, I begin that process.

RELATING TO THE PROCEDURES CONCERNING THE ARTICLES OF IMPEACHMENT AGAINST WILLIAM JEFFERSON CLINTON

Mr. LOTT. I send a resolution to the desk and ask unanimous consent that it be read in its entirety by the clerk, and time for the two parties be waived.

The CHIEF JUSTICE. The clerk will read the resolution in its entirety.

Mr. LOTT. I believe there was a request for unanimous consent.

The CHIEF JUSTICE. Without objection, the request is agreed to.

The legislative clerk read as follows:

A resolution (S. Res. 30) relative to the procedures concerning the Articles of Impeachment against William Jefferson Clinton.

Resolved,

TITLE I—PROCEDURES CONCERNING THE ARTICLES OF IMPEACHMENT AGAINST WILLIAM JEFFERSON CLINTON

SEC. 101. That the deposition time for all witnesses be determined by the Senate Majority Leader and Minority Leader, as outlined in Senate Resolution 16, One Hundred Sixth Congress, First Session, and title II of this resolution and that all Senators have an opportunity to review all deposition material, which shall be made available at the earliest possible time.

SEC. 102. When the Senate reconvenes on the day after completion of the depositions, and the review period, it shall be in order for both the House Managers and the President's counsel to move to resolve any objections made during any deposition. After resolution of any such motions, it shall be in order for the House Managers and/or White House counsel to make a motion or motions to admit the depositions or portions thereof into evidence, whether transcribed or on video tape provided further for a presentation employing all or portions of such tape, and it shall then be in order for the two Leaders jointly, only to make motions for additional discovery because of new relevant evidence discovered during the depositions. Motions may also then be made for orders governing the presentation of evidence and/or the testifying of witnesses before the Senate.

SEC. 103. If no such motions are made, or following the completion of any procedures authorized as a result of the votes on any motions, the White House shall have up to 24 hours to make any motions dealing with testimony or evidence that the White House counsel deems appropriate, as described previously.

SEC. 104. If no such motions are made, or no witnesses are called to testify in the Senate, the Senate shall proceed to final arguments as provided in the impeachment rules waiving the two person rule contained in Rule XXII of the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials for not to exceed six hours, to be equally divided. If motions are agreed to regarding new evidence or calling of new witnesses, this resolution is suspended.

SEC. 105. At the conclusion of the final arguments the parties shall proceed in accordance with the rules of impeachment: *Provided however,* That no motion with respect to re-opening the record in the case shall be in order, and: *Provided further,* That it shall be in order for a Senator to offer a motion to suspend the rules to allow for open final deliberations with no amendments or motions to that motion in order; and the Senate shall proceed to vote on the motion to suspend the rules to provide for open Senate deliberations.

SEC. 106. Following that vote, and if no motions have been agreed to as provided in sections 102 and 103, and no motions are agreed to following the arguments, then the vote will occur on any pending motions and amendments thereto and then on the articles of impeachment no later than 12:00 noon on Friday, February 12, 1999.

TITLE II—TO AUTHORIZE ISSUANCE OF SUBPOENAS TO TAKE DEPOSITIONS IN THE TRIAL OF THE ARTICLES OF IMPEACHMENT AGAINST WILLIAM JEFFERSON CLINTON, PRESIDENT OF THE UNITED STATES

SEC. 201. That, pursuant to Rules V and VI of the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials, and S. Res. 16, 106th Congress, 1st Session, the Chief Justice of the United States, through the Secretary of the Senate, shall issue subpoenas for the taking of testimony on oral deposition to

the following witnesses: Sidney Blumenthal, Monica S. Lewinsky, and Vernon E. Jordan, Jr.

SEC. 202. The Sergeant at Arms is authorized to utilize the services of the Deputy Sergeant at Arms or any other employee of the United States Senate in serving the subpoenas authorized to be issued by this resolution.

SEC. 203. Depositions authorized by this resolution shall be taken before, and presided over by, on behalf of the Senate, two Senators appointed by the Majority Leader and the Democratic Leader, acting jointly, one of whom shall administer to witnesses the oath prescribed by Rule XXV of the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials. Acting jointly, the presiding officers shall have authority to rule, as an initial matter, upon any question arising out of the deposition. All objections to a question shall be noted by the presiding officers upon the record of the deposition, but the examination shall proceed, and the witness shall answer such question. A witness may refuse to answer a question only when necessary to preserve a legally-recognized privilege, and must identify such privilege cited if refusing to answer a question.

SEC. 204. Examination of witnesses at depositions shall be conducted by the Managers on the part of the House or their counsel, and by counsel for the President. Witnesses shall be examined by no more than two persons each on behalf of the Managers and counsel for the President. Witnesses may be accompanied by counsel. The scope of the examination by the Managers and counsel for both parties shall be limited to the subject matters reflected in the Senate record. The party taking a deposition shall present to the other party, at least 18 hours in advance of the deposition, copies of all exhibits which the deposing party intends to enter into the record during the deposition. No exhibits outside of the Senate record shall be employed, except for articles and materials in the press, including electronic media. Any party may interrogate any witness as if that witness were declared adverse.

SEC. 205. The depositions shall be videotaped and a transcript of the proceedings shall be made. The depositions shall be conducted in private. No person shall be admitted to any deposition except for the following: the witness, counsel for the witness, the Managers on the part of the House, counsel for the Managers, counsel for the President, and the presiding officers; further, such persons whose presence is required to make and preserve a record of the proceedings in videotaped and transcript forms, and employees of the Senate whose presence is required to assist the presiding officers in presiding over the depositions, or for other purposes, as determined after consultation by the Majority Leader with the Democratic Leader. All present must maintain the confidentiality of the proceedings.

SEC. 206. The presiding officers at the depositions shall file the videotaped and transcribed records of the depositions with the Secretary of the Senate, who shall maintain them as confidential proceedings of the Senate. The Sergeant at Arms is authorized to make available for review any of the videotaped or transcribed deposition records to Members of the Senate, one designated staff member per Senator, and the Chief Justice. The Senate may direct the Secretary of the Senate to distribute such materials, and to use whichever means of dissemination, including printing as Senate documents, printing in the *Congressional Record,* photo- and video-duplication, and electronic dissemination, he determines to be appropriate to accomplish any distribution of the videotaped or transcribed deposition records that he is directed to make pursuant to this section.

SEC. 207. The depositions authorized by this resolution shall be deemed to be proceedings before the Senate for purposes of Rule XXIX of the Standing Rules of the Senate, Senate Resolution 259, 100th Congress, 1st Session, 2 U.S.C. §§ 191, 192, 194, 288b, 288d, 288f, 18 U.S.C. §§ 6002, 6005, and 28 U.S.C. § 1365. The Secretary shall arrange for stenographic assistance, including videotaping, to record the depositions as provided in section 5. Such expenses as may be necessary shall be paid from the Appropriation Account—Miscellaneous Items in the contingent fund of the Senate upon vouchers approved by the Secretary.

SEC. 208. The Secretary shall notify the Managers on the part of the House, and counsel for the President, of this resolution.

The CHIEF JUSTICE. The Chair recognizes the minority leader.

AMENDMENT NO. 1

Mr. DASCHLE. Mr. Chief Justice, I have an amendment that I send to the desk.

The CHIEF JUSTICE. The clerk will read the amendment.

The legislative clerk read as follows:

The Senator from South Dakota [Mr. DASCHLE] proposes an amendment numbered 1.

In the resolution strike all after the word "that" in the first line and insert the following:

"the deposition time for all witnesses to be deposed be limited to no later than close of business Wednesday, February 3 and that all Senators have an opportunity to review all deposition material, which shall be made available at the earliest possible time.

"When the Senate reconvenes the trial at 10 a.m. on Saturday, February 6 it shall be in order to resolve any objections that may not be resolved regarding the depositions; after these deposition objections have been disposed of, it shall be in order for the House managers and/or the White House counsel to make a motion, or motions to admit the depositions or portions thereof into evidence, such motions shall be limited to transcribed deposition material only;

"On Monday, February 8 there shall be 4 hours equally divided for closing arguments; with the White House using the first 2 hours and the House Republican managers using the final 2 hours; that

"Upon the completion of the closing arguments the Senate shall begin final deliberation on the articles; a timely filed motion to suspend the rules and open these deliberations shall be in order; upon the completion of these deliberations the Senate shall, without any intervening action, amendment, motion or debate, vote on the articles of impeachment.

"*Provided further,* That the votes on the articles shall occur no later than 12 noon Friday, February 12."

The CHIEF JUSTICE. The Chair recognizes the Senator from Utah, Mr. HATCH.

Mr. HATCH. Parliamentary inquiry, Mr. Chief Justice: Does the majority leader's resolution, does that also keep open the right of Senators to file——

The CHIEF JUSTICE. The Parliamentarian says it takes a unanimous consent for a parliamentary inquiry.

Mr. HATCH. I ask unanimous consent I be permitted to ask one question.

The CHIEF JUSTICE. Is there objection?

Without objection, it is so ordered.

Mr. HATCH. Does the majority leader's resolution allow for the filing and consideration of motions that may not be mentioned in the resolution itself?

The CHIEF JUSTICE. The Parliamentarian tells me it is never the function of the Chair to interpret a resolution.

Mr. LOTT addressed the Chair.

The CHIEF JUSTICE. The majority leader.

Mr. LOTT. I believe the regular order is that now we would go to a vote on the two resolutions. Just for the information of Senators, after that, Senator DASCHLE may have a motion, again, as I indicated earlier, just to go to a vote on the articles of impeachment.

So there could be three votes now, in order, without intervening debate. After that, Senator DASCHLE and I will formally lock in the beginning time for the depositions.

I yield the floor.

The CHIEF JUSTICE. The first vote will be on the amendment from the minority leader, the Senator from South Dakota.

The yeas and nays are required.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Colorado [Mr. ALLARD] is necessarily absent.

Mr. REID. I announce that the Senator from Maryland [Ms. MIKULSKI] is absent because of illness.

I further announce that, if present and voting, the Senator from Maryland [Ms. MIKULSKI] would vote "aye."

The result was announced—yeas 44, nays 54, as follows:

[Rollcall Vote No. 6]

[Subject: Daschle amendment No. 1 to S. Res. 30]

YEAS—44

Akaka	Edwards	Levin
Baucus	Feingold	Lieberman
Bayh	Feinstein	Lincoln
Biden	Graham	Moynihan
Bingaman	Harkin	Murray
Boxer	Hollings	Reed
Breaux	Inouye	Reid
Bryan	Johnson	Robb
Byrd	Kennedy	Rockefeller
Cleland	Kerrey	Sarbanes
Conrad	Kerry	Schumer
Daschle	Kohl	Torricelli
Dodd	Landrieu	Wellstone
Dorgan	Lautenberg	Wyden
Durbin	Leahy	

NAYS—54

Abraham	Frist	McConnell
Ashcroft	Gorton	Murkowski
Bennett	Gramm	Nickles
Bond	Grams	Roberts
Brownback	Grassley	Roth
Bunning	Gregg	Santorum
Burns	Hagel	Sessions
Campbell	Hatch	Shelby
Chafee	Helms	Smith (NH)
Cochran	Hutchinson	Smith (OR)
Collins	Hutchison	Snowe
Coverdell	Inhofe	Specter
Craig	Jeffords	Stevens
Crapo	Kyl	Thomas
DeWine	Lott	Thompson
Domenici	Lugar	Thurmond
Enzi	Mack	Voinovich
Fitzgerald	McCain	Warner

NOT VOTING—2

Allard	Mikulski

The amendment (No. 1) was rejected.

The CHIEF JUSTICE. The question is on agreeing to S. Res. 30, the resolution offered by Senator LOTT. On this question, the yeas and nays are called for.

Mr. DASCHLE addressed the Chair.

The CHIEF JUSTICE. The Chair recognizes the minority leader.

Mr. DODD. Mr. Chief Justice, the Senate is not in order.

The CHIEF JUSTICE. The Senate will be in order.

AMENDMENT NO. 2

Mr. DASCHLE. Mr. Chief Justice, I send an amendment to the desk.

The CHIEF JUSTICE. The clerk will report.

The legislative clerk read as follows:

The Senator from South Dakota [Mr. DASCHLE] proposes an amendment numbered 2.

In the resolution strike all after the word "that" in the first line and insert the following:

"the Senate now proceed to closing arguments; that there be 2 hours for the White House counsel followed by 2 hours for the House managers; and that at the conclusion of this time the Senate proceed to vote, on each of the articles, without intervening action, motion or debate, except for deliberations, if so decided by the Senate."

The CHIEF JUSTICE. The question is on the amendment just read. The yeas and nays are automatic. The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Colorado [Mr. ALLARD] is necessarily absent.

Mr. REID. I announce that the Senator from Maryland [Ms. MIKULSKI] is absent because of illness.

I further announce that, if present and voting, the Senator from Maryland [Ms. MIKULSKI] would vote "aye."

The result was announced—yeas 43, nays 55, as follows:

[Rollcall Vote No. 7]

[Subject: Daschle amendment No. 2]

YEAS—43

Akaka	Edwards	Lieberman
Baucus	Feinstein	Lincoln
Bayh	Graham	Moynihan
Biden	Harkin	Murray
Bingaman	Hollings	Reed
Boxer	Inouye	Reid
Breaux	Johnson	Robb
Bryan	Kennedy	Rockefeller
Byrd	Kerrey	Sarbanes
Cleland	Kerry	Schumer
Conrad	Kohl	Torricelli
Daschle	Landrieu	Wellstone
Dodd	Lautenberg	Wyden
Dorgan	Leahy	
Durbin	Levin	

NAYS—55

Abraham	Crapo	Hatch
Ashcroft	DeWine	Helms
Bennett	Domenici	Hutchinson
Bond	Enzi	Hutchison
Brownback	Feingold	Inhofe
Bunning	Fitzgerald	Jeffords
Burns	Frist	Kyl
Campbell	Gorton	Lott
Chafee	Gramm	Lugar
Cochran	Grams	Mack
Collins	Grassley	McCain
Coverdell	Gregg	McConnell
Craig	Hagel	Murkowski

Nickles	Smith (NH)	Thompson
Roberts	Smith (OR)	Thurmond
Roth	Snowe	Voinovich
Santorum	Specter	Warner
Sessions	Stevens	
Shelby	Thomas	

NOT VOTING—2

Allard	Mikulski

The amendment (No. 2) was rejected.

The CHIEF JUSTICE. The majority leader.

Mr. LOTT. Mr. Chief Justice, I suggest the absence of a quorum.

The CHIEF JUSTICE. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. LOTT. Mr. Chief Justice, I ask unanimous consent that the order for the quorum call be rescinded.

The CHIEF JUSTICE. Without objection, it is so ordered.

Mr. LEAHY. Mr. Chief Justice, may we have order, please?

The CHIEF JUSTICE. The Senate will be in order.

AMENDMENT NO. 3

Mr. LOTT. Mr. Chief Justice, I send an amendment to the desk modifying the last paragraph of page 3.

The CHIEF JUSTICE. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Mississippi [Mr. LOTT] proposes an amendment numbered 3.

On page 3, strike the words "any pending motions and amendments thereto and then on" and insert the following at the end of page 3 "strike the period and insert, if all motions are disposed of and final deliberations are completed."

Mr. LOTT. Mr. Chief Justice, I ask unanimous consent that the amendment be agreed to and that the motion to reconsider be laid upon the table.

The CHIEF JUSTICE. Without objection, it is so ordered.

The amendment (No. 3) was agreed to.

The CHIEF JUSTICE. The question is on the resolution, as amended. The yeas and nays are automatic. The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Colorado [Mr. ALLARD] is necessarily absent.

Mr. REID. I announce that the Senator from Maryland [Ms. MIKULSKI] is absent because of illness.

I further announce that, if present and voting, the Senator from Maryland [Ms. MIKULSKI] would vote "no."

The result was announced—yeas 54, nays 44, as follows:

[Rollcall Vote No. 8]

[Subject: S. Res. 30 as amended]

YEAS—54

Abraham	Bunning	Collins
Ashcroft	Burns	Coverdell
Bennett	Campbell	Craig
Bond	Chafee	Crapo
Brownback	Cochran	DeWine

Domenici	Hutchison	Santorum
Enzi	Inhofe	Sessions
Fitzgerald	Jeffords	Shelby
Frist	Kyl	Smith (NH)
Gorton	Lott	Smith (OR)
Gramm	Lugar	Snowe
Grams	Mack	Specter
Grassley	McCain	Stevens
Gregg	McConnell	Thomas
Hagel	Murkowski	Thompson
Hatch	Nickles	Thurmond
Helms	Roberts	Voinovich
Hutchinson	Roth	Warner

NAYS—44

Akaka	Edwards	Levin
Baucus	Feingold	Lieberman
Bayh	Feinstein	Lincoln
Biden	Graham	Moynihan
Bingaman	Harkin	Murray
Boxer	Hollings	Reed
Breaux	Inouye	Reid
Bryan	Johnson	Robb
Byrd	Kennedy	Rockefeller
Cleland	Kerrey	Sarbanes
Conrad	Kerry	Schumer
Daschle	Kohl	Torricelli
Dodd	Landrieu	Wellstone
Dorgan	Lautenberg	Wyden
Durbin	Leahy	

NOT VOTING—2

Allard	Mikulski

The resolution (S. Res. 30), as amended, was agreed to.

The CHIEF JUSTICE. The Chair recognizes the majority leader.

MODIFICATION TO TITLE II

Mr. LOTT. Mr. Chief Justice, with regard to the beginning of the depositions, I ask unanimous consent that title II of S. Res. 30 be modified with the language I send to the desk.

The CHIEF JUSTICE. Without objection, it is so ordered.

The modification follows:

TITLE II—TO AUTHORIZE ISSUANCE OF SUBPOENAS TO TAKE DEPOSITIONS IN THE TRIAL OF THE ARTICLES OF IMPEACHMENT AGAINST WILLIAM JEFFERSON CLINTON, PRESIDENT OF THE UNITED STATES

SEC. 201. That, pursuant to Rules V and VI of the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials, and Senate Resolution 16, One Hundred Sixth Congress, First Session, the Chief Justice of the United States, through the Secretary of the Senate, shall issue subpoenas for the taking of testimony on oral deposition to the following witnesses: Sidney Blumenthal, Monica S. Lewinsky, and Vernon E. Jordon, Jr.

SEC. 202. The Sergeant at Arms is authorized to utilize the services of the Deputy Sergeant at Arms or any other employee of the United States Senate in serving the subpoenas authorized to be issued by this resolution.

SEC. 203. Depositions authorized by this resolution shall be taken before, and presided over by, on behalf of the Senate, two Senators appointed by the Majority Leader and the Democratic Leader, acting jointly, one of whom shall administer to witnesses the oath prescribed by Rule XXV of the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials. Acting jointly, the presiding officers shall have authority to rule, as an initial matter, upon any question arising out of the deposition. All objections to a question shall be noted by the presiding

officers upon the record of the deposition but the examination shall proceed, and the witness shall answer such question. A witness may refuse to answer a question only when necessary to preserve a legally-recognized privilege, or constitutional right, and must identify such privilege cited if refusing to answer a question.

SEC. 204. Examination of witnesses at depositions shall be conducted by the Managers on the part of the House or their counsel, and by counsel for the President. Witnesses shall be examined by no more than two persons each on behalf of the Managers and counsel for the President. Witnesses may be accompanied by counsel. The scope of the examination by the Managers and counsel for both parties shall be limited to the subject matters reflected in the Senate record. The party taking a deposition shall present to the other party, at least 18 hours in advance of the deposition, copies of all exhibits which the deposing party intends to enter into the deposition. No exhibits outside of the Senate record shall be employed, except for articles and materials in the press, including electronic media. Any party may interrogate any witness as if that witness were declared adverse.

SEC. 205. The depositions shall be videotaped and a transcript of the proceedings shall be made. The depositions shall be conducted in private. No person shall be admitted to any deposition except for the following: The witness, counsel for the witness, the Managers on the part of the House, counsel for the Managers, counsel for the President, and the presiding officers; further, such persons whose presence is required to make and preserve a record of the proceedings in videotaped and transcript forms, and Senate staff members whose presence is required to assist the presiding officers in presiding over the depositions, or for other purposes, as determined by the Majority Leader and the Democratic Leader. All present must maintain the confidentiality of the proceedings.

SEC. 206. The presiding officers at the depositions shall file the videotaped and transcribed records of the depositions with the Secretary of the Senate, who shall maintain them as confidential proceedings of the Senate. The Sergeant at Arms is authorized to make available for review at secure locations, any of the videotaped or transcribed deposition records to Members of the Senate, one designated staff member per Senator, and the Chief Justice. The Senate may direct the Secretary of the Senate to distribute such materials, and to use whichever means of dissemination, including printing as Senate documents, printing in the Congressional Record, photo- and video-duplication, and electronic dissemination, he determines to be appropriate to accomplish any distribution of the videotaped or transcribed deposition records that he is directed to make pursuant to this section.

SEC. 207. The depositions authorized by this resolution shall be deemed to be proceedings before the Senate for purposes of Rule XXIX of the Standing Rules of the Senate, Senate Resolution 259, One Hundredth Congress, First Session, sections 191, 192, 194, 288b, 288d, 288f of title 2, United States Code, sections 6002, 6005 of title 18, United States Code, and section 1365 of title 28, United States Code. The Secretary shall arrange for stenographic assistance, including videotaping, to record the depositions as provided in section 205. Such expenses as may be necessary shall be paid from the Appropriation Account—Miscellaneous Items in the contingent fund of the Senate upon vouchers approved by the Secretary.

SEC. 208. The Majority and Minority Leaders, acting jointly, may make other provisions for the orderly and fair conduct of these depositions as they seem appropriate.

SEC. 209. The Secretary shall notify the Managers on the part of the House, and counsel for the President, of this resolution.

The resolution (S. Res. 30), as amended, as modified, reads as follows:

S. RES. 30

Resolved,

TITLE I—PROCEDURES CONCERNING THE ARTICLES OF IMPEACHMENT AGAINST WILLIAM JEFFERSON CLINTON

SEC. 101. That the deposition time for all witnesses be determined by the Senate Majority Leader and Minority Leader, as outlined in Senate Resolution 16, One Hundred Sixth Congress, First Session, and title II of this resolution and that all Senators have an opportunity to review all deposition material, which shall be made available at the earliest possible time.

SEC. 102. When the Senate reconvenes on the day after completion of the depositions, and the review period, it shall be in order for both the House Managers and

the President's counsel to move to resolve any objections made during any deposition. After resolution of any such motions, it shall be in order for the House Managers and/or White House counsel to make a motion or motions to admit the depositions or portions thereof into evidence, whether transcribed or on videotape provided further for a presentation employing all or portions of such tape, and it shall then be in order for the two Leaders jointly, only to make motions for additional discovery because of new relevant evidence discovered during the depositions. Motions may also then be made for orders governing the presentation of evidence and/or the testifying of witnesses before the Senate.

SEC. 103. If no such motions are made, or following the completion of any procedures authorized as a result of the votes on any motions, the White House shall have up to 24 hours to make any motions dealing with testimony or evidence that the White House counsel deems appropriate, as described previously.

SEC. 104. If no such motions are made, or no witnesses are called to testify in the Senate, the Senate shall proceed to final arguments as provided in the impeachment rules waiving the two person rule contained in Rule XXII of the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials for not to exceed six hours, to be equally divided. If motions are agreed to regarding new evidence or calling of new witnesses, this resolution is suspended.

SEC. 105. At the conclusion of the final arguments the parties shall proceed in accordance with the rules of impeachment: *Provided however,* That no motion with respect to reopening the record in the case shall be in order, and: *Provided further,* That it shall be in order for a Senator to offer a motion to suspend the rules to allow for open final deliberations with no amendments or motions to that motion in order; and the Senate shall proceed to vote on the motion to suspend the rules to provide for open Senate deliberations.

SEC. 106. Following that vote, and if no motions have been agreed to as provided in sections 102 and 103, and no motions are agreed to following the arguments, then the vote will occur on the articles of impeachment no later than 12:00 noon on Friday, February 12, 1999, if all motions are disposed of and final deliberations are completed.

TITLE II—TO AUTHORIZE ISSUANCE OF SUBPOENAS TO TAKE DEPOSITIONS IN THE TRIAL OF THE ARTICLES OF IMPEACHMENT AGAINST WILLIAM JEFFERSON CLINTON, PRESIDENT OF THE UNITED STATES

SEC. 201. That, pursuant to Rules V and VI of the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials, and Senate Resolution 16, One Hundred Sixth Congress, First Session, the Chief Justice of the United States, through the Secretary of the Senate, shall issue subpoenas for the taking of testimony on oral deposition to the following witnesses: Sidney Blumenthal, Monica S. Lewinsky, and Vernon E. Jordon, Jr.

SEC. 202. The Sergeant at Arms is authorized to utilize the services of the Deputy Sergeant at Arms or any other employee of the United States Senate in serving the subpoenas authorized to be issued by this resolution.

SEC. 203. Depositions authorized by this resolution shall be taken before, and presided over by, on behalf of the Senate, two Senators appointed by the Majority Leader and the Democratic Leader, acting jointly, one of whom shall administer to witnesses the oath prescribed by Rule XXV of the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials. Acting jointly, the presiding officers shall have authority to rule, as an initial matter, upon any question arising out of the deposition. All objections to a question shall be noted by the presiding officers upon the record of the deposition but the examination shall proceed, and the witness shall answer such question. A witness may refuse to answer a question only when necessary to preserve a legally-recognized privilege, or constitutional right, and must identify such privilege cited if refusing to answer a question.

SEC. 204. Examination of witnesses at depositions shall be conducted by the Managers on the part of the House or their counsel, and by counsel for the President. Witnesses shall be examined by no more than two persons each on behalf of the Managers and counsel for the President. Witnesses may be accompanied by counsel. The scope of the examination by the Managers and counsel for both parties shall be limited to the subject matters reflected in the Senate record. The party taking a deposition shall present to the other party, at least 18 hours in advance of the deposition, copies of all exhibits which the deposing party intends to enter into the deposition. No exhibits outside of the Senate record shall be employed, except for articles and materials in the press, including electronic media. Any party may interrogate any witness as if that witness were declared adverse.

SEC. 205. The depositions shall be videotaped and a transcript of the proceedings shall be made. The depositions shall be conducted in private. No person shall be admitted to any deposition except for the following: The witness, counsel for the witness, the Managers on the part of the House, counsel for the Managers, counsel for the President, and the presiding officers; further, such persons whose presence is required to make and preserve a record of the proceedings in videotaped and transcript forms, and Senate staff members whose presence is required to assist the presiding officers in presiding over the depositions, or for other purposes, as determined by the Majority Leader and the Democratic Leader. All present must maintain the confidentiality of the proceedings.

SEC. 206. The presiding officers at the depositions shall file the videotaped and transcribed records of the depositions with the Secretary of the Senate, who shall maintain them as confidential proceedings of the Senate. The Sergeant at Arms is authorized to make available for review at secure locations, any of the videotaped or transcribed deposition records to Members of the Senate, one designated staff member per Senator, and the Chief Justice. The Senate may direct the Secretary of the Senate to distribute such materials, and to use whichever means of dissemination, including printing as Senate documents, printing in the Congressional Record, photo- and video-duplication, and electronic dissemination, he determines to be appropriate to accomplish any distribution of the videotaped or transcribed deposition records that he is directed to make pursuant to this section.

SEC. 207. The depositions authorized by this resolution shall be deemed to be proceedings before the Senate for purposes of Rule XXIX of the Standing Rules of the Senate, Senate Resolution 259, One Hundredth Congress, First Session, sections 191, 192, 194, 288b, 288d, 288f of title 2, United States Code, sections 6002, 6005 of title 18, United States Code, and section 1365 of title 28, United States Code. The Secretary shall arrange for stenographic assistance, including videotaping, to record the depositions as provided in section 205. Such expenses as may be necessary shall be paid from the Appropriation Account—Miscellaneous Items in the contingent fund of the Senate upon vouchers approved by the Secretary.

SEC. 208. The Majority and Minority Leaders, acting jointly, may make other provisions for the orderly and fair conduct of these depositions as they seem appropriate.

SEC. 209. The Secretary shall notify the Managers on the part of the House, and counsel for the President, of this resolution.

UNANIMOUS CONSENT AGREEMENT

Mr. LOTT. Mr. Chief Justice, I ask unanimous consent that the unanimous consent agreement I send to the desk be agreed to. This all deals with the taking of depositions.

The CHIEF JUSTICE. Without objection, it is so ordered.

The text of the unanimous consent agreement reads as follows:

I ask unanimous consent that the time and place to take depositions in the trial of the articles of impeachment against William Jefferson Clinton be decided jointly by the majority leader, and the Democratic leader, and shall be set forth in each subpoena.

I further ask unanimous consent that the opportunity for taking depositions of Monica Lewinsky, Vernon Jordan and Sidney Blumenthal expires when the Senate convenes on Thursday, Feb. 4, 1999.

Finally I ask unanimous consent that each deposition may last no more than 8 hours, unless the majority leader, and the Democratic leader determine on a deposition-by-deposition basis, to extend the time of the deposition, and all the time allotted for examination shall be divided equally between the parties, and time consumed by objections shall not be charged to either objecting party.

Mr. LOTT. Now, I understand, Mr. Chief Justice, that the Democratic leader is prepared to agree that the depositions will begin on Monday, February 1, and with this having been decided, and the vote we just took, we have discussed the schedule for the remainder of the week. In view of the fact that at this point the parties will begin to prepare for depositions and the depositions will begin on Monday, Members will not be expected to be here for any busi-

ness before Wednesday, but we could be required to have a session Wednesday afternoon.

I want to emphasize that as the deposition material becomes available, we will have the Sergeant at Arms have it in a room for Members to begin to review. So beginning Tuesday, for Senators who would like to begin reviewing the depositions, the material in the depositions, it will be available in installments as it becomes available on Tuesday. So you would have that opportunity Tuesday and Wednesday. Not later than Thursday, then, we would go to the next phase of our agreement that we have voted on.

At this time, we are notifying the Members that there will be no further recorded votes and no further business while we await returning of the depositions through Friday, Saturday, Sunday, Monday, and Tuesday, but Members should expect to be here on Wednesday and they would need to be here on Wednesday, in order to begin to make sure they have had time to review the documents, the deposition material, so that we can proceed, then, on Thursday.

Mr. HARKIN. Will the Senator yield?

Mr. LOTT. I yield.

Mr. HARKIN. Are Senators allowed to attend these depositions or not?

Mr. LOTT. Under the agreement we just passed, Mr. Chief Justice, if I may proceed and respond to that question.

The CHIEF JUSTICE. Without objection.

Mr. LOTT. There will be a Senator from each side at the depositions who will preside over the depositions. Senator DASCHLE and I also will have certain staff there, but a Senator other than the two presiding Senators would not be in order to what we agreed to. There will be one from each side who will be presiding and will actually make determinations when objections are made.

ADJOURNMENT UNTIL 1 P.M. THURSDAY, FEBRUARY 4, 1999

Mr. LOTT. I now ask unanimous consent that the Court of Impeachment stand in adjournment until the hour of 1 p.m. on Thursday, February 4.

There being no objection, at 6:34 p.m. the Senate, sitting as a Court of Impeachment, adjourned until Thursday, February 4, 1999, at 1 p.m.

III

106TH CONGRESS
1ST SESSION

S. RES. 30

Relative to the proedures concerning the articles of impeachment against William Jefferson Clinton.

IN THE SENATE OF THE UNITED STATES

JANUARY 28, 1999

Mr. LOTT submitted the following resolution; which was considered, amended, and agreed to

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RESOLUTION

Relative to the procedures concerning the articles of impeachment against William Jefferson Clinton.

Resolved,

TITLE I—PROCEDURES CONCERNING THE ARTICLES OF IMPEACHMENT AGAINST WILLIAM JEFFERSON CLINTON

SEC. 101. That the deposition time for all witnesses be determined by the Senate Majority Leader and Minority Leader, as outlined in Senate Resolution 16, One Hundred Sixth Congress, First Session, and title II of this resolution and that all Senators have an opportunity to re-

1 view all deposition material, which shall be made available
2 at the earliest possible time.
3 SEC. 102. When the Senate reconvenes on the day
4 after completion of the depositions, and the review period,
5 it shall be in order for both the House Managers and the
6 President's counsel to move to resolve any objections made
7 during any deposition. After resolution of any such mo-
8 tions, it shall be in order for the House Managers and/
9 or White House counsel to make a motion or motions to
10 admit the depositions or portions thereof into evidence,
11 whether transcribed or on videotape provided further for
12 a presentation employing all or portions of such tape, and
13 it shall then be in order for the two Leaders jointly, only
14 to make motions for additional discovery because of new
15 relevant evidence discovered during the depositions. Mo-
16 tions may also then be made for orders governing the pres-
17 entation of evidence and/or the testifying of witnesses be-
18 fore the Senate.
19 SEC. 103. If no such motions are made, or following
20 the completion of any procedures authorized as a result
21 of the votes on any motions, the White House shall have
22 up to 24 hours to make any motions dealing with testi-
23 mony or evidence that the White House counsel deems ap-
24 propriate, as described previously.

1 SEC. 104. If no such motions are made, or no wit-
2 nesses are called to testify in the Senate, the Senate shall
3 proceed to final arguments as provided in the impeach-
4 ment rules waiving the two person rule contained in Rule
5 XXII of the Rules of Procedure and Practice in the Senate
6 When Sitting on Impeachment Trials for not to exceed
7 six hours, to be equally divided. If motions are agreed to
8 regarding new evidence or calling of new witnesses, this
9 resolution is suspended.

10 SEC. 105. At the conclusion of the final arguments
11 the parties shall proceed in accordance with the rules of
12 impeachment: *Provided however,* That no motion with re-
13 spect to reopening the record in the case shall be in order,
14 and: *Provided further,* That it shall be in order for a Sen-
15 ator to offer a motion to suspend the rules to allow for
16 open final deliberations with no amendments or motions
17 to that motion in order; and the Senate shall proceed to
18 vote on the motion to suspend the rules to provide for open
19 Senate deliberations.

20 SEC. 106. Following that vote, and if no motions have
21 been agreed to as provided in sections 102 and 103, and
22 no motions are agreed to following the arguments, then
23 the vote will occur on the articles of impeachment no later
24 than 12:00 noon on Friday, February 12, 1999, if all mo-
25 tions are disposed of and final deliberations are completed.

1 TITLE II—TO AUTHORIZE ISSUANCE OF SUB-
2 POENAS TO TAKE DEPOSITIONS IN THE
3 TRIAL OF THE ARTICLES OF IMPEACH-
4 MENT AGAINST WILLIAM JEFFERSON CLIN-
5 TON, PRESIDENT OF THE UNITED STATES
6 SEC. 201. That, pursuant to Rules V and VI of the
7 Rules of Procedure and Practice in the Senate When Sit-
8 ting on Impeachment Trials, and Senate Resolution 16,
9 One Hundred Sixth Congress, First Session, the Chief
10 Justice of the United States, through the Secretary of the
11 Senate, shall issue subpoenas for the taking of testimony
12 on oral deposition to the following witnesses: Sidney
13 Blumenthal, Monica S. Lewinsky, and Vernon E. Jordan,
14 Jr.
15 SEC. 202. The Sergeant at Arms is authorized to uti-
16 lize the services of the Deputy Sergeant at Arms or any
17 other employee of the United States Senate in serving the
18 subpoenas authorized to be issued by this resolution.
19 SEC. 203. Depositions authorized by this resolution
20 shall be taken before, and presided over by, on behalf of
21 the Senate, two Senators appointed by the Majority Lead-
22 er and the Democratic Leader, acting jointly, one of whom
23 shall administer to witnesses the oath prescribed by Rule
24 XXV of the Rules of Procedure and Practice in the Senate
25 When Sitting on Impeachment Trials. Acting jointly, the

1 presiding officers shall have authority to rule, as an initial
2 matter, upon any question arising out of the deposition.
3 All objections to a question shall be noted by the presiding
4 officers upon the record of the deposition but the examina-
5 tion shall proceed, and the witness shall answer such ques-
6 tion. A witness may refuse to answer a question only when
7 necessary to preserve a legally-recognized privilege, or con-
8 stitutional right, and must identify such privilege cited if
9 refusing to answer a question.

10 SEC. 204. Examination of witnesses at depositions
11 shall be conducted by the Managers on the part of the
12 House or their counsel, and by counsel for the President.
13 Witnesses shall be examined by no more than two persons
14 each on behalf of the Managers and counsel for the Presi-
15 dent. Witnesses may be accompanied by counsel. The
16 scope of the examination by the Managers and counsel for
17 both parties shall be limited to the subject matters re-
18 flected in the Senate record. The party taking a deposition
19 shall present to the other party, at least 18 hours in ad-
20 vance of the deposition, copies of all exhibits which the
21 deposing party intends to enter into the deposition. No
22 exhibits outside of the Senate record shall be employed,
23 except for articles and materials in the press, including
24 electronic media. Any party may interrogate any witness
25 as if that witness were declared adverse.

1 SEC. 205. The depositions shall be videotaped and a
2 transcript of the proceedings shall be made. The deposi-
3 tions shall be conducted in private. No person shall be ad-
4 mitted to any deposition except for the following: The wit-
5 ness, counsel for the witness, the Managers on the part
6 of the House, counsel for the Managers, counsel for the
7 President, and the presiding officers; further, such per-
8 sons whose presence is required to make and preserve a
9 record of the proceedings in videotaped and transcript
10 forms, and Senate staff members whose presence is re-
11 quired to assist the presiding officers in presiding over the
12 depositions, or for other purposes, as determined by the
13 Majority Leader and the Democratic Leader. All present
14 must maintain the confidentiality of the proceedings.
15 SEC. 206. The presiding officers at the depositions
16 shall file the videotaped and transcribed records of the
17 depositions with the Secretary of the Senate, who shall
18 maintain them as confidential proceedings of the Senate.
19 The Sergeant at Arms is authorized to make available for
20 review at secure locations, any of the videotaped or tran-
21 scribed deposition records to Members of the Senate, one
22 designated staff member per Senator, and the Chief Jus-
23 tice. The Senate may direct the Secretary of the Senate
24 to distribute such materials, and to use whichever means
25 of dissemination, including printing as Senate documents,

1 printing in the Congressional Record, photo- and video-
2 duplication, and electronic dissemination, he determines to
3 be appropriate to accomplish any distribution of the
4 videotaped or transcribed deposition records that he is di-
5 rected to make pursuant to this section.

6 SEC. 207. The depositions authorized by this resolu-
7 tion shall be deemed to be proceedings before the Senate
8 for purposes of Rule XXIX of the Standing Rules of the
9 Senate, Senate Resolution 259, One Hundredth Congress,
10 First Session, sections 191, 192, 194, 288b, 288d, 288f
11 of title 2, United States Code, sections 6002, 6005 of title
12 18, United States Code, and section 1365 of title 28,
13 United States Code. The Secretary shall arrange for sten-
14 ographic assistance, including videotaping, to record the
15 depositions as provided in section 205. Such expenses as
16 may be necessary shall be paid from the Appropriation Ac-
17 count—Miscellaneous Items in the contingent fund of the
18 Senate upon vouchers approved by the Secretary.

19 SEC. 208. The Majority and Minority Leaders, acting
20 jointly, may make other provisions for the orderly and fair
21 conduct of these depositions as they seem appropriate.

22 SEC. 209. The Secretary shall notify the Managers
23 on the part of the House, and counsel for the President,
24 of this resolution.

○

LEADERSHIP PROTOCOL ON DEPOSITIONS
PURSUANT TO S. RES. 16 AND S. RES. 30

For the depositions of Monica S. Lewinsky, Vernon E. Jordan, Jr., and Sidney Blumenthal, unless changed by further action by the Leaders :

1. Ms. Lewinsky's deposition shall occur on February 1, Mr. Jordan's deposition shall occur on February 2, and Mr. Blumenthal's deposition shall occur on February 3.

2. Ms. Lewinsky's deposition shall be taken in a suitable private space in The Renaissance Mayflower Hotel convenient to the witness; Mr. Jordan's and Mr. Blumenthal's depositions shall be taken in Room S-407 The Capitol.

3. Each deposition shall begin at 9:00 a.m. and shall last for no more than eight hours of questioning, to be equally divided between the parties.

4. Senators DeWine, Specter, and Thompson, and, if needed, Senator Kyl, on behalf of the Majority, and Senators Dodd, Edwards, and Leahy, on behalf of the Minority, are appointed to preside at the depositions.

5. The following Senate staff and officers shall be admitted to the depositions:
   Senate Legal Counsel: Thomas Griffith, Morgan Frankel
   Majority Leader: Louis DuPart, Karla Carpenter, Helen Rhee
   Democratic Leader: Robert Bauer, Bill Corr, Andrea LaRue, Kevin Simpson, Steven Reich
   Majority Presiding Officers: Laurel Pressler, David Urban, David Brog, Fred Ansell
   Minority Presiding Officers: Victoria Bassetti, Bruce Cohen, Beryl Howell, Julie Katzman
   Sergeant at Arms or his designee

Tom Daschle
Democratic Leader

Trent Lott
Majority Leader

THE IMPEACHMENT OF PRESIDENT WILLIAM JEFFERSON CLINTON

Mr. CLELAND. Mr. Chief Justice, let me begin by saying that the reason we are here today, the reason the United States Senate is being asked to exercise what Alexander Hamilton termed the "awful discretion" of impeachment, is because of the wrongful, reprehensible, indefensible conduct of one person, the President of the United States, William Jefferson Clinton. Indeed, I believe it is conduct deserving of the censure of the Senate, and I will support such a resolution when it comes before us.

The question before the Senate, however, is not whether the President's conduct was wrong, or immoral, or even censurable. We must decide solely as to whether or not he should be convicted of the allegations contained in the articles of impeachment and thus removed from office. In my opinion, the case for removal, presented in great detail in the massive 60,000-page report submitted by the House, in many hours of very capable but often repetitive presentations to the Senate by the House managers and the President's defense team, and in many additional hours of Senators' questioning of the two sides, fails to meet the very high standards which we must demand with respect to Presidential impeachments. Therefore, I will vote to dismiss the impeachment case against William Jefferson Clinton, and to vote for the Senate resuming other necessary work for the American people.

To this very point, I have reserved my judgment on this question because of my constitutional responsibility and oath to "render impartial justice" in this case. Most of the same record presented in great detail to Senators in the course of the last several weeks has long been before the public, and indeed most of that public, including editorial boards, talk show hosts, and so forth, long ago reached their own conclusions as to the impeachment of President Clinton. But I have now heard enough to make my decision. With respect to the witnesses the House managers apparently now wish to depose and call before the Senate, the existing record represents multiple interrogations by the Office of the Independent Counsel and its grand jury, with not only no cross-examinations by the President's counsel but, with the exception of the President's testimony, without even the presence of the witnesses' own counsel. It is difficult for me to see how that record would possibly be improved from the prosecution's standpoint. Thus, I will not support motions to depose or call witnesses.

In reaching my decision on impeachment, there are a number of factors which have been discussed or speculated about in the news media which were not a part of my calculations.

First of all, while as political creatures neither the Senate nor the House can or should be immune from public opinion, we have a very precise constitutionally-prescribed responsibility in this matter, and popular opinion must not be a controlling consideration. I believe Republican Senator William Pitt Fessenden of Maine said it best during the only previous Presidential impeachment trial in 1868:

To the suggestion that popular opinion demands the conviction of the President on these charges, I reply that he is not now on trial before the people, but before the Senate . . . The people have not heard the evidence as we have heard it. The responsibility is not on them, but upon us. They have not taken an oath to "do im-

partial justice according to the Constitution and the laws." I have taken that oath. I cannot render judgment upon their convictions, nor can they transfer to themselves my punishment if I violate my own. And I should consider myself undeserving of the confidence of that just and intelligent people who imposed upon me this great responsibility, and unworthy of a place among honorable men, if for any fear of public reprobation, and for the sake of securing popular favor, I should disregard the convictions of my judgment and my conscience.

Nor was my decision premised on the notion, suggested by some, that the stability of our Government would be severely jeopardized by the impeachment of President Clinton. I have full faith in the strength of our Government and its leaders and, more importantly, faith in the American people to cope successfully with whatever the Senate decides. There can be no doubt that the impeachment of a President would not be easy for the country but just in this century, about to end, we have endured great depressions and world wars. Today, the U.S. economy is strong, the will of the people to move beyond this national nightmare is great, and we have an experienced and able Vice President who is more than capable of stepping up and assuming the role of the President.

Third, although we have heard much argument that the precedents of judicial impeachments should be controlling in this case, I have not been convinced and did not rely on such testimony in making my decision. After a review of the record, historical precedents, and consideration of the different roles of Presidents and Federal judges, I have concluded that there is indeed a different legal standard for impeachment of Presidents and Federal judges. Article 11, Section 4 of the Constitution provides that "the President, Vice President, and all civil officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors." Article III, Section I of the Constitution indicates that judges "shall hold their Offices during good Behavior." Presidents are elected by the people and serve for a fixed term of years, while Federal judges are appointed without public approval to serve a life tenure without any accountability to the public. Therefore, under our system, impeachment is the only way to remove a Federal judge from office while Presidents serve for a specified term and face accountability to the public through elections. With respect to the differing impeachment standards themselves, Chief Justice Rehnquist once wrote, "the terms 'treason, bribery and other high crimes and misdemeanors' are narrower than the malfeasance in office and failure to perform the duties of the office, which may be grounds for forfeiture of office held during good behavior."

And my conclusions with respect to impeachment were not based upon considerations of the proper punishment of President Clinton for his misdeeds. During the impeachment of President Nixon, the Report by the Staff of the Impeachment Inquiry concluded that "impeachment is the first step in a remedial process—removal from office and possible disqualification from holding future office. The purpose of impeachment is not personal punishment; its function is primarily to maintain constitutional government." Regardless of the outcome of the Senate impeachment trial, President Clinton remains subject to censure by the House and Senate, and criminal prosecution for any crimes he may have committed. Whatever pun-

ishment President Clinton deserves for his misdeeds will be provided elsewhere.

Finally, I do not believe that perjury or obstruction of justice could never rise to the level of threatening grievous harm to the Republic, and thus represent adequate grounds for removal of a President. However, we must approach such a determination with the greatest of care. Impeachment of a President is, perhaps with the power to declare War, the gravest of constitutional responsibilities bestowed upon the Congress. During the history of the United States, the Senate has only held impeachment trials for two Presidents, the 1868 trial of President Johnson, who had not been elected to that office, and now President Clinton. Although the Senate can look to impeachment trials of other public officials, primarily judicial, as I have already said, I do not believe that those precedents are or should be controlling in impeachment trials of Presidents, or indeed of other elected officials.

My decision was based on one overriding concern: the impact of this precedent-setting case on the future of the Presidency, and indeed of the Congress itself. It is not Bill Clinton who should occupy our only attention. He already stands rebuked by the House impeachment votes, and by the words of virtually every Member of Congress of both political parties. And even if we do not remove him from office, he still stands liable to future criminal prosecution for his actions, as well as to the verdict of history. No, it is Mr. Clinton's successors, Republican, Democrat or any other party, who should be our concern.

The Republican Senator, Edmund G. Ross of Kansas, who "looked down into my open grave" of political oblivion when he cast one of the decisive votes in acquitting Andrew Johnson in spite of his personal dislike of the President explained his motivation this way:

> . . . In a large sense, the independence of the executive office as a coordinate branch of the government was on trial . . . If . . . the President must step down . . . upon insufficient proofs and from partisan considerations, the office of President would be degraded, cease to be a coordinate branch of government, and ever after subordinated to the legislative will. It would practically have revolutionized our splendid political fabric into a partisan Congressional autocracy.

While our Government is certainly on a stronger foundation now than in the aftermath of the Civil War, the basic point remains valid. If anything, in today's world of rapidly emerging events and threats, we need an effective, independent Presidency even more than did mid-19th Century Americans.

While in the history of the United States the U.S. Senate has never before considered impeachment articles against a sitting elected official, we do have numerous cases of each House exercising its constitutional right to, "punish its Members for disorderly behavior, and, with the concurrence of two-thirds expel a Member." However, since the Civil War, while a variety of cases involving personal and private misconduct have been considered, the Senate has never voted to expel a Member, choosing to censure instead on seven occasions, and the House has rarely chosen the ultimate sanction. Should the removal of a President be subject to greater punishment with lesser standards of evidence than the Congress has applied to itself when the Constitution appears to call for the

reverse in limiting impeachment to cases of "treason, bribery and other high crimes or misdemeanors"? In my view, the answer must be no.

Thus, for me, as one Senator, the bar for impeachment and removal from office of a President must be a high one. I want the record to reflect that my vote to dismiss is based upon a standard of evidence equivalent to that used in criminal proceedings—that is, that guilt must be proven "beyond a reasonable doubt"—and a standard of impeachable offense which, in my view, conforms to the founders' intentions that such an offense must be one which represents official misconduct threatening grievous harm to our whole system of government. To quote Federalist No. 65, Hamilton defined as impeachable:

> Those offenses which proceed from the misconduct of public men, or, in other words, from the abuse or violation of some public trust. They are of a nature which may with peculiar propriety be denominated political, as they relate chiefly to injuries done immediately to the society itself.

As I have said before, I can conceive of instances in which both perjury and obstruction of justice would meet this test. I certainly believe that most, if not all, capital crimes, including murder, would qualify for impeachment and removal from office. However, in my judgment, the current case does not reach the necessary high standard.

In the words of John F. Kennedy, "with a good conscience our only sure reward, with history the final judge of our deeds," I believe that dismissal of the impeachment case against William Jefferson Clinton is the appropriate action for the U.S. Senate. It is the action which will best preserve the system of government which has served us so well for over 200 years, a system of checks and balances, with a strong and independent Chief Executive.

In closing, I wish to address those in the Senate and House, and among the American public, who have reached a different conclusion than have I in this case. I do not question the sincerity or legitimacy of your viewpoint. The process itself pushes us to make absolute judgments—yes or no to conviction and removal from office—and the nature of debate yields portraits of complex issues in stark black-and-white terms, but I believe it is possible for reasonable people to reach different conclusions on this matter. Indeed, I recognize that, while my decision seeks to avoid the dangers of setting the impeachment bar too low, setting that bar too high is not without risks. I believe the House managers spoke eloquently about the need to preserve respect for the rule of law, including the critical principle that no one, not even the President of the United States, is above that rule. However, I have concluded that the threat to our system of a weakened Presidency, made in some ways subordinate to the will of the legislative branch, outweighs the potential harm to the rule of law, because that latter risk is mitigated by:

An intact, independent criminal justice system, which indeed will retain the ability to render final, legal judgment on the President's conduct;

A vigorous, independent press corps which remains perfectly capable of exposing such conduct, and of extracting a personal, professional and political price; and

An independent Congress which will presumably continue to have the will and means to oppose Presidents who threaten our system of government.

By the very nature of this situation, where I sit in judgment of a Democratic President as a Democratic Senator, I realize that my decision cannot convey the nonpartisanship which is essential to achieve closure on this matter, one way or the other. Indeed, in words which could have been written today, the chief proponent among the Founding Fathers of a vigorous Chief Executive, Alexander Hamilton, wrote in 1788, in No. 65 of "The Federalist Papers," that impeachments "will seldom fail to agitate the passions of the whole community, and to divide them into parties, more or less friendly or inimical, to the accused. In many cases, it will connect itself with the pre-existing factions, and will enlist all their animosities, partialities, influence and interest on one side, or on the other; and in such cases there will always be the greatest danger, that the decision will be regulated more by the comparative strength of the parties than by the real demonstration of guilt or innocence."

I have, however, in making my decision, laid out for you the standards which I believe to be appropriate whenever the Congress considers the removal from office of an elected official, whether executive branch, or legislative branch. I will do my best to stand by those standards in all such cases to come before me while I have the privilege of representing the people of Georgia in the U.S. Senate, regardless of the party affiliation of the accused. I only hope and pray that no future President, of either party, will ever again engage in conduct which provides any basis, including the basis of the current case, for the Congress to consider the grave question of impeachment.

MOTIONS TO DISMISS AND TO SUBPOENA WITNESSES

Mr. FEINGOLD. Mr. Chief Justice, during yesterday's impeachment trial proceedings, I voted against the motion to dismiss offered by the senior Senator from West Virginia, Mr. BYRD. I also voted in favor of allowing the House managers to depose a limited number of witnesses in this case. I would like to explain the reasons for my votes.

Let me state first that I understand that this trial is a unique proceeding; it is not precisely a "trial" as we understand that term to be used in the criminal context. The Senate, for example, as the Chief Justice made clear in upholding Senator HARKIN's objection early in the trial, is both judge and jury, with the final authority to determine not only the "guilt" or "innocence" of the defendant, but also the legal standard to apply and what kind of evidence is relevant to the decision.

Nonetheless, Senator BYRD's motion was a motion to dismiss, which I believe gives the motion a legal connotation we must not ignore. I believe that in order to dismiss the case at this point, a Senator should be of the opinion that it is not possible for the House managers to show that the President has committed high crimes and misdemeanors, even if they are permitted to call the witnesses that they want to call. Even apart from the possibility

of witness testimony, in order to vote for the motion, a Senator should believe that regardless of what occurs in the closing arguments by the parties and in deliberations in the Senate, that a Senator would not vote to convict.

So for me, this motion to dismiss was akin to asking the judge in this case not to send the case to the jury. In a criminal trial, there is a strong presumption against taking a case out of the hands of the jury, and a very high degree of certainty on the facts of the case is demanded before a judge will take that step. Indeed, a judge must decide that a reasonable juror viewing the evidence in the light most favorable to the prosecution could not vote to convict the defendant, before he will direct a judgment of acquittal.

My view, as of this moment, is that to dismiss this case would in appearance and in fact improperly "short circuit" this trial. I simply cannot say that the House managers cannot prevail regardless of what witnesses might plausibly testify and regardless of what persuasive arguments might be offered either by the managers or by Senators who support conviction. When the history of this trial is written, I want it to be viewed as fair and comprehensive, not as having been shortened merely because the result seemed preordained.

As Senator COLLINS and I indicated in a letter to Senator BYRD on Saturday and in a unanimous consent request we offered on Monday, my preference would have been to divide the motion to dismiss and allow separate votes on the two articles of impeachment to more closely approximate the separate final votes on the two articles contemplated by the impeachment rules. It would have allowed the Senate to consider the strength of the evidence presented on the two separate articles and the possibility that one of the articles comes closer to the core meaning of high crimes and misdemeanors than the other.

I believe that many of my colleagues on the Republican side view the perjury article as less convincing than the obstruction article and might have voted to dismiss it had the opportunity to do that been made available. But we will never know. When a final vote is taken on the articles, and I now believe such votes will almost certainly occur, I hope that my colleagues who did not vote to dismiss the case today will carefully consider the two articles separately.

I want to be clear that my vote not to dismiss this case does not mean that I would vote to convict the President and remove him from office or that I am leaning in that direction. I have not reached a decision on that question. It is my inclination, however, to demand a very high standard of proof on this question. Because the House managers have relied so heavily on the argument that the President has committed the Federal crimes of perjury and obstruction of justice as the reason that his conduct rises to the level of high crimes and misdemeanors, they probably should be required to prove each element of those crimes beyond a reasonable doubt. That is the standard that juries in criminal proceedings must apply. In this case, where the "impeachability" question rests so much on a conclusion that the President's conduct was not only reprehensible but also criminal, I currently believe that standard is the most appropriate for a Senator to apply.

It is my view at this point that the House managers' case has some serious problems, and I am not certain that it can be helped by further testimony from witnesses. But I believe it is possible that it can. The managers deserve the opportunity to take the depositions they have requested.

In voting against the motion to dismiss and to allow witnesses to be subpoenaed, I have not reached the important question of whether, even if the House managers manage to prove their case beyond a reasonable doubt, the offenses charged would be "impeachable" and require the President to be removed from office. That is an important question that I decided should be addressed in the context of a final vote on the articles after the evidentiary record is complete. Therefore, I want to be clear that my vote against the motion does not mean I am leaning in favor of a final vote to convict the President. I am not.

But I have determined, after much thought, that we must continue to move forward and not truncate the proceeding at this point. I believe that it is appropriate for the House managers, and if they so choose, the President's counsel, to be able to depose and possibly to present the live testimony of at least a small number of witnesses. And I want to hear final arguments and deliberate with my colleagues before rendering a final verdict on the articles.

I reached my decision on witnesses for a number of reasons. First, although I recognize that this is not a typical, ordinary criminal trial, it is significant and in my mind persuasive that in almost all criminal trials witnesses are called by the prosecution in trying to prove its case. Because I have decided that the House managers probably must be held to the highest standard of proof—beyond a reasonable doubt—I believe that they should have every reasonable opportunity to meet that standard and prove their case.

Furthermore, witnesses have been called every time in our history that the Senate has held an impeachment trial. In two cases, the impeachment of Senator Blount in 1797 and the impeachment of Judge English in 1926, articles of impeachment passed by the House were dismissed without a trial. I recognize that an unusually exhaustive factual record has been assembled by the Independent Counsel, including numerous interviews with, and grand jury testimony from, key witnesses. That distinguishes this case from a number of past impeachments. But in at least the three judicial impeachments in the 1980s, the record of a full criminal trial—two resulting in conviction and one in acquittal—was available to the Senate and still witnesses testified.

In this case, the House managers strenuously argued that witnesses should be called. It would call the fairness of the process into question were we to deny the House managers the opportunity to depose at least those witnesses that might shed light on the facts in a few key areas of disagreement in this case. I regard this as a close case in some respects, and the best course to follow is to allow both sides a fair opportunity to make the case they wish to make.

This does not mean that I support an unlimited number of witnesses or an unnecessarily extended trial. Furthermore, at this point, I am reserving judgment on the question of whether live testimony on the Senate floor should be permitted. I believe the Sen-

ate has the power, and should exercise the power, to assure that any witnesses called to deliver live testimony have evidence that is truly relevant to present.

In this regard, I think we should allow somewhat greater latitude to the President's counsel since he is the defendant in this proceeding. I am inclined to give a great deal of deference to requests by the President's counsel to conduct discovery and even call additional witnesses if they believe that is necessary. But at least with respect to the House manager's case, while we must be fair in allowing them to depose the witnesses they say they need to prove their case, we need not allow them to broaden their case beyond the acts alleged in the articles or inordinately extend the trial with witnesses who cannot reasonably be expected to provide evidence relevant to our decision on those articles.

Finally, let me reiterate. My vote against the motion to dismiss should not be interpreted as a signal that I intend to vote to convict the President. Nor does it mean that I would not support a motion to adjourn or a motion to dismiss offered at some later stage of this trial, although I strongly prefer that this trial conclude with a final vote on the articles. It only means that I do not believe that dismissing the case at this moment is the appropriate course for the Senate to follow.

MOTION OF THE HOUSE MANAGERS FOR THE APPEARANCE OF WITNESSES AT DEPOSITIONS AND TO ADMIT EVIDENCE

Mr. LEAHY. Mr. Chief Justice, the House managers want to conduct depositions of at least four people and their requests to admit affidavits could very well lead to the depositions of at least three others and, indeed, many more witnesses. The three people they expressly ask be subpoenaed are Monica Lewinsky, Vernon Jordan and Sidney Blumenthal. All three have previously testified before the Starr grand jury and Ms. Lewinsky has been interviewed or testified at least 23 times on these matters over the last year.

The fourth deponent requested by the House managers is none other than the President of the United States. Although they characterize their request as a "petition" that the President be requested to appear, in their memorandum, the House Republican managers are less coy about their request. They note that "obtaining testimony from the witness named in the motion, and additionally from the President himself" is what they seek.

The House managers' request is unprecedented in impeachments. The Senate has never formally requested or demanded that a respondent testify in his own impeachment trial. Should the President decide that he wants to speak to the Senate, that would be his choice. But I cannot support an effort that would have the Senate reject over 200 years of our jurisprudence and begin requiring an accused to prove his innocence.

The presumption of innocence is a core concept in our rule of law and should not be so cavalierly abandoned. The petition of the House managers is a clever but destructive effort to stand this trial on its head. As a former prosecutor and trial attorney, I appreciate the temptation to turn the tables on an accused person to make up for a weak case, but the Senate should not condone it. The burden

of proof is on the House to establish why the Senate should convict and remove from office the person the American people elected to serve as their President.

I commend President Clinton for focusing on his duties as President and on moving the country forward. That the Congress remains immersed in this impeachment trial is distraction enough from the functions of our Federal Government. We have heard hours of argument from the House Republican managers and the response of the President's lawyers. Senator BYRD has, pursuant to our unanimous consent resolution governing these proceedings, offered a motion to dismiss to bring this entire matter to conclusion. If, on the other hand, the majority in the Senate wishes to continue these proceedings, that is the majority's prerogative.

The House managers apparently want to excuse the weaknesses in their case by blaming the Senate for not calling the President to the stand or the President for not volunteering to run the gauntlet of House managers. Having had the House reject their proposed article of impeachment based on the President's deposition in the Jones case, the House managers are left to pursue their shifting allegations of perjury before the grand jury. Their allegations of perjury have devolved to semantical differences and the choice of such words as "occasional" and "on certain occasions." Their view of perjury allows them to take a part of a statement out of context and say that it is actionable for not explicating all relevant facts and circumstances. They view perjury by a standard that would condemn most presentations, even some of their own presentations before the Senate.

In addition to their request that the President be deposed, the House Republican managers also propose to include in this record affidavits and other materials apparently not part of the record provided by Mr. Starr or considered by the House. Ironically, in so doing, they have chosen to proceed by affidavit. They must know that by proffering the declaration of an attorney for Paula Jones about that case and the link between that now settled matter and the Starr investigation, they are necessarily opening this area to possible extensive discovery that could result in the depositions of additional witnesses, as well.

Does anyone think that the Senate record can fairly be limited to the proffered declaration of Mr. Holmes without giving the President an opportunity to depose him and other relevant witnesses after fair discovery? The links between the Jones case and the Starr investigation will be fair game for examination in the fullness of time if the Holmes declaration proffered by the House managers is accepted.

The Holmes declaration is at variance with the House managers' proffer. The declaration suggests that the Jones lawyers made a collective decision, whereas the House managers suggest that the decision to subpoena Ms. Currie was Mr. Holmes' decision. Mr. Holmes declares that no Washington Post article played any part in his decisionmaking to subpoena Ms. Currie and that he "does not recall" any attorney in his firm saying anything about such an article "in the discussions in which we decided to subpoena Ms. Currie." This could lead to discovery from a number of Jones lawyers.

The Holmes declaration says that the Jones lawyers "had received what [they] considered to be reliable information that Ms. Currie was instrumental in facilitating Monica Lewinsky's meetings with Mr. Clinton and that Ms. Currie was central to the 'cover story' Mr. Clinton and Ms. Lewinsky had developed to use in the event their affair was discovered." That assertion was strongly omitted from the House Republican managers' proffer. That assertion raises questions about what the Jones lawyers knew, when they knew it and whether there was any link to the Starr investigation. If the purpose of the declaration is to rebut the notion that Ms. Currie was subpoenaed because the Jones lawyers were following the activities of the Starr investigation, this declaration falls far short of the mark. It raises more questions that it resolves.

I am surprised to see a judicial clerk submit an affidavit in this case. The one thing that is clear from Mr. Ward's affidavit is that it does not support the conclusions drawn in the House managers' proffer. Mr. Ward says only that President Clinton was looking directly at Mr. Bennett at one moment during the argument by the lawyers during the deposition. He does not aver, as the House managers suggest he would competently testify, that "he saw President Clinton listening attentively to Mr. Bennett's remarks."

While the affidavit of Barry Ward cannot convert the President's silence into statements, it does provide one perspective on the President's deposition in the Jones case. Accepting that proffered evidence may, however, prompt the President's lawyers to want to examine other perspectives to give the Senate a more complete picture and a fairer opportunity to consider what was happening during the discussions among Judge Wright and the lawyers. For that purpose, is the Senate next going to authorize the deposition of Judge Wright and the other lawyers who attended the deposition? The circumstances under which Mr. Ward came to take such an affidavit and what he knows about the variety of issues mentioned in the House managers' proffer on this item will undoubtedly be fair subjects of discovery by the President's lawyers if this is admitted.

The House managers characterized documents as certain telephone records and the participants in various telephone calls whose identities are not revealed by the records. Indeed, those proffered documents are without authentification. The House Republican managers' brief goes even farther, suggesting that the telephone records will prove what happened at the White House gate on December 6, and asserting the identity of those who participated in telephone calls and the content of those telephone calls and concluding that they prove meetings and conversations that were not even by telephone. The documents appear to be a series of numbers. Giving them content and context will require more than mere authentification. Any such testimonial explanation can be expected to engender further discovery, as well.

Now let me turn to the witnesses that the House managers have identified by name and for which they are expressly seeking subpoenas at the outset of this discovery period. I understand that under Senate Resolution 16 Senators must vote for or against the entire package of witnesses and discovery requested by the House.

The House Republican managers have already interviewed Monica Lewinsky after Mr. Starr arranged for that interview and had her ordered to comply. In light of the circumstances under which she has already been forced to cooperate with the House Republican managers, any doubt as to the coercion being exercised through her immunity agreement could not be more starkly seen. I seriously question Ms. Lewinsky's freedom to express herself in the present circumstances and suggest that her immunity situation will inevitably affect the credibility of anything that she might "add" to the House's case. Mr. Starr has the equivalent of a loaded gun to her head, along with her mother's and her father's.

Consider also the report in The Washington Post on Tuesday that Mr. Starr tore up her immunity agreement once before when she tried to clarify her February 1998 proffer to note that she and the President had talked about using a "cover story" before she was ever subpoenaed as a witness in the Jones case, not after. That is now a key point of the House managers' proffer but it points now in the other direction by suggesting that she is now willing to testify that the President "instructed" her to invoke cover stories if questioned in connection with the Jones case. Would not such a shift in testimony necessarily lead to discovery into the impact of the immunity agreement on her testimony and the many twists and turns in the 7-month negotiation between Mr. Starr and Ms. Lewinsky's attorneys and the pressures exerted upon her over the last 6 months?

Moreover, press accounts of the celebrated interview of Ms. Lewinsky by the House managers last weekend suggest that she may also have said things during that interview that were favorable to the President. The President's counsel are now in the untenable position of having to oppose the House managers' motion without specific knowledge of any exculpatory information that Ms. Lewinsky may have provided that would weigh against the need to call her as a witness. That is unfair and contrary to basic precepts of our law. The House managers created this circumstance and should not benefit from it.

The House managers also insist that they must open discovery to take the deposition of Vernon Jordan. Mr. Jordan has been interviewed or testified under oath before Starr's grand jury at least five times already. The House managers' proffer is merely that they expect that his live testimony will lead to reasonable and logical inferences that might help their case and somehow link the job search to discouraging her testimony in the Jones case. That is not a proffer of anything new but an attempt to take another shot at eliciting testimony that Mr. Starr could not.

The House managers also insist that the Senate must depose Sidney Blumenthal. Mr. Blumenthal also testified before the Starr grand jury. The House managers' proffer notes nothing new that he would be expected to provide.

If the President has been willing to forego the opportunity to cross-examine the witnesses whose grand jury testimony has been relied upon by the House managers, that removes the most pressing need for further discovery in this matter. After all, Ms. Lewinsky and Mr. Jordan, and to a lesser extent, Mr. Blumenthal, were interviewed for days and weeks by the FBI, trained investiga-

tors, Mr. Starr's lawyers and then testified, some repeatedly, before the Starr grand jury. That is about as one-sided as discovery gets—no cross-examination, no opportunity to compare early statements with the way things are reconfigured and re-expressed after numerous preparation sessions with Mr. Starr's office.

These witnesses testified under threat of prosecution by Mr. Starr. Ms. Lewinsky remains under a very clear threat of prosecution, even though she has a limited grant of immunity from Starr. This special prosecutor has shown every willingness to threaten and prosecute.

If the President has not initiated efforts to obtain more discovery and witnesses and is willing to have the matter decided on the voluminous record submitted to the House, the House managers carry a heavy burden to justify extending these proceedings further and requiring the reexamination of people who have already testified.

I heard over and over from the House managers that there is no doubt, that the record established before the House and introduced into this Senate proceeding convinced the House to vote for articles of impeachment to require the removal of the President from office last month. The House managers have told us that they have done a magnificent job and established their case.

Based on the House managers' motion and their proffer in justification, I do not believe that they have justified extending these proceedings into the future through additional depositions and additional evidence. Can anyone confidently predict how many witnesses will be needed to sort through the evidentiary supplement that the House proffers and the issues that it raises? Can anyone confidently predict how long that discovery will take and how long this trial will be extended? And for what? What is the significant and ultimate materiality to the fundamental issues being contested at this trial of the materials the House is moving now to include in the record? Although the House managers can say that they only sought to depose three witnesses, does anyone think that in fairness the President's lawyers and the House managers together will not end up deposing at least 10 people if the Senate were to grant the House motion?

The Senate should not extend these proceedings by a single day. The Senate runs a grave risk of being drawn down into the mire that stained the House impeachment proceedings. Republicans and Democrats have all told me that they do not believe that there is any possibility that this trial will end in the conviction of the President and his removal. In that light, the Senate should have proceeded to conclude this matter rather than extend it.

MOTION TO DISMISS THE ARTICLES OF IMPEACHMENT AGAINST WILLIAM JEFFERSON CLINTON

Mr. LEAHY. Mr. Chief Justice, this Senate is the last of the 20th century. We begin this first session of the 106th Congress facing a challenge that no other Senate in over 100 years has been called upon to meet; namely, whether to remove from office the person the American people elected to serve as the President of the United States.

What we do in this impeachment of the President, in terms of the standards we apply and the judgments we make, will either follow the Constitution or alter the intent of the framers for all time. I have heard more than one Senator acknowledge that in that sense it is not just the President but also the Senate that is on trial in this matter.

The Senate now has an opportunity, as provided in S. Res. 16, to vote on a motion to conclude these proceedings by adopting Senator BYRD'S motion to dismiss. I commend Senator BYRD and agree with him that such action is both appropriate and in the best interests of the Nation. I do not believe that the House managers have proven a case for conviction and removal of the President on the articles of impeachment sent by the House last year. I further suggest that those articles are improperly vague and duplicitous.

We can all agree that the President's conduct with a young woman in the White House was inexcusable. It was deeply disappointing, especially to those who know the President and who support the many good things he has done for this country. His conduct in trying to keep his illicit relationship secret from his wife and family, his friends and associates, and from the glare of a politically charged lawsuit and from the American public, though understandable on a human level, has had terrible consequences for him personally and for the legacy of his Presidency.

Last week, Senator Bumpers reminded us of the human costs that have been paid by this President and his family. The underlying lawsuit has now been settled and a financial settlement of $850,000 has been paid on a case that the District Court judge had dismissed for failing to state a claim. The President has admitted terribly embarrassing personal conduct before a Federal grand jury, has seen a videotape of that grand jury testimony broadcast to the entire Nation which had excerpts replayed over and over, again. Articles of impeachment were reported by the House of Representatives against a President for only the second time in our history.

The question before the Senate is not whether William Jefferson Clinton has suffered, for surely he has as a result of his conduct. The question is not even whether William Jefferson Clinton should be punished and sent to jail on a criminal charge, for the Constitution does not confer that authority on this Court of Impeachment. The question, as framed by the House, is whether his conduct violated Federal criminal laws and, if he did, whether those crimes constitute "other high crimes and misdemeanors" warranting his removal from the office of President to which he was reelected by the people of the United States in 1996.

Justice Robert Jackson, when he was Attorney General in 1940, observed that the most dangerous power of the prosecutor is the power to "pick people that he thinks he should get, rather than cases that need to be prosecuted." When this happens, he said, "it is not a question of discovering the commission of a crime and then looking for the man who has committed it, it is a question of picking the man and then . . . putting investigators to work, to pin some offense on him." "It is here," he concluded, "that law enforcement becomes personal, and the real crime becomes that of being unpopular with the predominant or governing group, being at-

tached to the wrong political views, or being personally obnoxious to or in the way of the prosecutor himself."

In the case of President William Jefferson Clinton, things became personal a long time ago. I am not alone in questioning Mr. Starr's conduct. His own ethics advisor felt compelled to resign his position after Mr. Starr appeared before the House Judiciary Committee as the head cheerleader for impeachment.

It now appears that Mr. Starr has gone from head cheerleader to the chief prosecutor for impeachment. Over the last week he forced Ms. Lewinsky to cooperate with the House Republican managers as part of her immunity agreement. She must "cooperate" under the threat that Mr. Starr may decide to prosecute her, her mother or her father if he is not satisfied.

It is now up to the Senate to restore sanity to this process, exercise judgment, do justice and act in the interests of the Nation. We will be judged both today and by history on whether we resolve this case in a way that serves the good of the country, not the political ends of any political party or particular person.

I doubt that any Senator can impartially say that the case against the President has been established beyond a reasonable doubt. In this matter, my view is that is the appropriate standard of proof. Here the Senate is being asked to override the electoral judgment of the American people with respect to the person they elected to serve them as the President of the United States. In this matter the charges have not been established beyond a reasonable doubt in a criminal case.

The inferences the House managers would draw from the facts are not compelled by the evidence. Indeed, the House managers fail to take into account Ms. Lewinsky's admitted interest in keeping her relationship with President Clinton from the public and out of the Jones case. They ignore the role of Linda Tripp in Ms. Lewinsky's job search and the fact that it was Ms. Tripp who suggested that Ms. Lewinsky involve Vernon Jordan. In light of these and other fundamental flaws in the House managers' case, I doubt whether many can vote that the articles have been established by clear and convincing evidence.

I know that Republican Senators as well as Democratic Senators have told me that they do not believe there is any realistic possibility that the Senate will convict the President and remove him from office. I agree. Having heard the arguments from both sides and having considered the evidence, I do not believe that there is any possibility that the Senate will convict the President on the articles of impeachment and remove him from office. That being so, I believe that the interests of the Nation are best served by ending this matter now, at the earliest opportunity.

As a consequence of the House's action, the impeachment process is continuing to preoccupy the Congress into this year. This unfinished business of constitutional dimension will necessarily displace the other important business facing the country until it is resolved. I believe this matter should be concluded and we should turn our attention to legislative matters.

History has judged harshly the radical Republicans who pursued impeachment against President Andrew Johnson. I believe that history will likewise render a harsh judgment against those who

have fomented this impeachment of William Jefferson Clinton on the charges brought forward by the House of Representatives. I do not believe those charges have been or can be proven. I do not believe that the House managers have justified the Senate overriding the 1996 presidential election and ordering the duly elected President of the United States removed from office.

When the Chief Justice, as Presiding Officer, sustained objection to the House managers' mischaracterization of the Senate in this matter, it highlighted the House managers' misconceptions of the trial. Senators are not merely serving as petit jurors who will be instructed on the law by a judge and are asked to find facts. Senators have a greater role and a greater responsibility in this trial. As the Chief Justice properly observed: "The Senate is not simply a jury; it is a court in this case."

Our job is to do justice in this matter and to protect the Constitution. In that process, I believe we must serve the interests of the Nation and fulfill our responsibilities to the American people. I believe that this impeachment trial should have been concluded now and that the articles of impeachment should be dismissed.

United States Senate

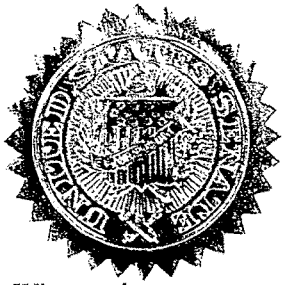
To: Monica S. Lewinsky
c/o Plato Cacheris
Law Offices of Plato Cacheris
1100 Connecticut Avenue, NW Suite 730
Washington, DC 20036

Greeting:

You and each of you are hereby commanded to appear before the Senate of the United States, on the first day of February, 1999, at 9:00 o'clock a.m., for a deposition to be taken before two Members of the United States Senate appointed pursuant to Senate Resolution 30, One Hundred Sixth Congress, First Session, at the Renaissance Mayflower Hotel,1127 Connecticut Avenue NW, in the city of Washington, then and there to testify your knowledge in the cause which is before the Senate in which the House of Representatives have impeached William Jefferson Clinton, President of the United States.

Fail not.

Witness William H. Rehnquist, Chief Justice of the United States and Presiding Officer of the Senate, at the city of Washington, this twenty-ninth day of January, 1999, the two hundred and twenty-third year of the Independence of the United States.



William H. Rehnquist
Chief Justice of the United States
and Presiding Officer of the Senate

Witnessed:

Secretary of the Senate

JANUARY 29, *1999*

I made service of the within subpoena by FACSIMILE TO PLATO CACHERIS, COUNSEL FOR *the within-named* MONICA S. LEWINSKY, *at* FACSIMILE NUMBER 202-775-8702, *at* 2:47 *o'clock* P *.m., on the* 29th *day of* JANUARY, *1999.*

The Senate of the United States to James W. Ziglar, Sergeant at Arms, United States Senate, greeting:

You are hereby commanded to serve and return the within subpoena according to law.

Dated at Washington, this 29th day of January, 1999, the two hundred and twenty-third year of the Independence of the United States.

Gary Sisco
Secretary of the Senate

United States Senate

To: Vernon E. Jordan, Jr.
c/o William G. Hundley
Akin, Gump, Strauss, Hauer & Feld
1333 New Hampshire Avenue, NW Suite 400
Washington, DC 20036

Greeting:

You and each of you are hereby commanded to appear before the Senate of the United States, on the second day of February, 1999, at 9:00 o'clock a.m., for a deposition to be taken before two Members of the United States Senate appointed pursuant to Senate Resolution 30, One Hundred Sixth Congress, First Session, at Room S–407, The Capitol, in the city of Washington, then and there to testify your knowledge in the cause which is before the Senate in which the House of Representatives have impeached William Jefferson Clinton, President of the United States.

Fail not.

Witness William H. Rehnquist, Chief Justice of the United States and Presiding Officer of the Senate, at the city of Washington, this twenty-ninth day of January, 1999, the two hundred and twenty-third year of the Independence of the United States.

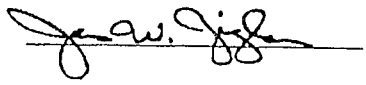
William H. Rehnquist
Chief Justice of the United States
and Presiding Officer of the Senate

Witnessed:

Secretary of the Senate

JANUARY 29, *1999*

I made service of the within subpoena by FACSIMILE TO WILLIAM G. HUNDLEY, COUNSEL FOR *the within-named* VERNON E. JORDAN, JR, *at* FACSIMILE NUMBER 202-887-4288, *at* 3:39 *o'clock* P *.m., on the* 29th *day of* JANUARY, *1999.*



The Senate of the United States to James W. Ziglar, Sergeant at Arms, United States Senate, greeting:

You are hereby commanded to serve and return the within subpoena according to law.

Dated at Washington, this 27th day of January, 1999, the two hundred and twenty-third year of the Independence of the United States.

Gary Sisco
Secretary of the Senate

United States Senate

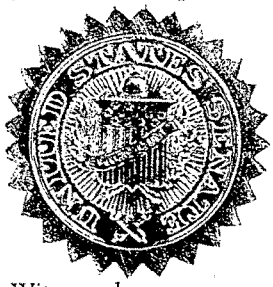
To: Sidney Blumenthal
c/o William A. McDaniel, Jr.
McDaniel & Marsh
118 West Mulberry Street
Baltimore, MD 21201-3600

Greeting:

You and each of you are hereby commanded to appear before the Senate of the United States, on the third day of February, 1999, at 9:00 o'clock a.m., for a deposition to be taken before two Members of the United States Senate appointed pursuant to Senate Resolution 30, One Hundred Sixth Congress, First Session, at Room S–407, The Capitol, in the city of Washington, then and there to testify your knowledge in the cause which is before the Senate in which the House of Representatives have impeached William Jefferson Clinton, President of the United States.

Fail not.

Witness William H. Rehnquist, Chief Justice of the United States and Presiding Officer of the Senate, at the city of Washington, this twenty-ninth day of January, 1999, the two hundred and twenty-third year of the Independence of the United States.



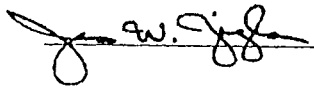
William H. Rehnquist
Chief Justice of the United States
and Presiding Officer of the Senate

Witnessed:

Secretary of the Senate

JANUARY 29, 1999

I made service of the within subpoena by HAND DELIVERY TO WILLIAM A. McDANIEL, JR., COUNSEL FOR *the within-named* SIDNEY BLUMENTHAL, *at* 725 12TH STREET, N.W. WASHINGTON, D.C., *at* 3:05 *o'clock* P. *.m., on the* 29th *day of* JANUARY, *1999.*



The Senate of the United States to James W. Ziglar, Sergeant at Arms, United States Senate, greeting:

You are hereby commanded to serve and return the within subpoena according to law.

Dated at Washington, this 27th day of January 1999, the two hundred and twenty-third year of the Independence of the United States.

Gary Sisco
Secretary of the Senate

WEDNESDAY, FEBRUARY 3, 1999

[From the Congressional Record]

IMPEACHMENT AND THE CONSTITUTION

Mr. DORGAN. Mr. Chief Justice, I want to call the attention of my colleagues to a piece that was written by our distinguished Senator from West Virginia, our colleague, Senator BYRD, that appeared in today's Washington Post entitled "Don't Tinker With Impeachment."

The reason I want to do that is there are discussions occurring now, according to some of my colleagues and accounts in the newspaper and on television, about trying to create a mechanism to require a vote in the Senate during the impeachment trial on the findings of fact prior to a vote on the articles of impeachment themselves.

I was just looking at the Constitution in our Senate manual, and, of course, article I in the Constitution establishes the basis for impeachment, and it is simple, direct and provides nothing of the sort that would lead Senators to believe that they can bifurcate the vote in the Senate in an impeachment trial first to findings of fact and have a majority vote on findings of fact and then to move toward a vote on the two articles of impeachment that are currently in front of the Senate.

But I think the article written by our colleague, Senator BYRD, provides the best description of the difficulty with these findings of fact. Let me read just a few comments, and I will ask unanimous consent to have the article printed in the RECORD at the conclusion of my remarks.

The article, in part, by Senator BYRD says:

> The notion of trumping the articles of impeachment with even a "broad" findings of fact flies in the face of what the Framers of the Constitution intended. They deliberately set the bar high when it came to the vote on articles of impeachment, first by requiring a supermajority of two-thirds of the Senate to convict, and second, by fusing the penalty—[that is] removal from office [being the penalty]—into the question of guilt.
>
> In voting on articles of impeachment [he goes on to say] senators must answer not one but two questions: Is the president guilty or not guilty of committing high crimes and misdemeanors, and, if he is guilty, do his actions warrant removal from office?

Continuing to quote from Senator BYRD's article:

> This was not a casual coupling on the part of the Framers. Their intent was to force senators to set aside their own passions and prejudices and focus instead on the best interests of the nation. To lift this burden from the shoulders of senators by offering them a way to convict the president without having to accept responsibility for removing him from office would, in effect, bastardize the impeachment process.
>
> Moreover [he says] the aftershocks would be felt long after this impeachment has faded into history. No longer would senators be confined to the articles of impeachment formulated by the House of Representatives. No longer would senators need a two-thirds majority vote to pronounce a president guilty. From this time forward, they could cite the precedent set by the Senate in the 106th Congress as giving them carte blanche to write, and approve by a simple majority, ersatz articles of impeachment cloaked as "findings of fact."

Senator BYRD, as always, finds the bull's-eye in this debate. This is not some ordinary debate; this is a debate about constitutional

requirements and responsibilities and what the provisions of the Constitution mean with respect to impeachment.

The impeachment article provisions of the Constitution require, when impeachment articles are voted by the U.S. House of Representatives and sent to the Senate, that a trial must commence, and the vote on the articles of impeachment would be conducted by the Senate; and two-thirds of the Senate would have to vote guilty on those articles of impeachment in order to remove a President from office.

But it doesn't bifurcate the vote, doesn't call for extra procedures, doesn't call for findings of fact, doesn't allow some Senators to say, "Yes, that's what the Constitution says but we're going to create a new, or pretend there's a new, provision in the Constitution without having the difficulty of debating Madison and Mason and Hamilton and Franklin over our proposal. We'll just pretend it's in the Constitution. And we'll have separate votes on findings of fact. And in fact, doing that, we can have our own little vote and create our own little result with only 51 Members of the Senate voting in favor of our resolution."

That is a terrible idea and, in my judgment, stands this Constitution, and the article of impeachment provisions in this Constitution, on its head. But Senator BYRD says it much better than I do. I will, as I indicated, include his article at the conclusion of my remarks.

This Constitution, written in a room in Philadelphia over 200 years ago, is quite a remarkable document. It established the separation of powers. It established the framework for a new kind of Government that has worked remarkably well. If those who watch these proceedings and become interested in the Constitution would go to that room in Philadelphia, they would see that that room still exists. It is called the Assembly Room in Constitution Hall.

That room, which is smaller than the Senate Chamber, has a chair in the front of the room where George Washington sat as he presided over that Chamber. The same chair sits there today. And you will see where Mason sat, Madison, Franklin, and others who wrote this Constitution. They wrote it on a hot Philadelphia summer with the curtains drawn to keep the heat out of that room, and they created this remarkable document that is printed in the Senate Manual. And that is the document by which we in the Senate are now conducting an impeachment trial.

I come to the floor today only to say that I think there is great danger in believing there are things written in this Constitution that don't exist in the Constitution. There is danger, in my judgment, in suggesting ways or mechanisms by which some can vote and create majority votes on some extraordinary findings of fact that are not provided for in this Constitution.

In this impeachment trial, there is one of two results, and that is a vote on the two articles of impeachment that have been sent to the U.S. Senate by the House of Representatives. That vote will be a vote cast by each and every Member of this Senate, and the vote will be either a vote to convict or a vote to acquit—guilty or not guilty on the two articles of impeachment. And my hope is that when the Senate reconvenes in the impeachment trial, all Senators will have read this rather remarkable article by the preeminent

constitutional scholar in this Chamber and the historian of this U.S. Senate, the esteemed Senator BYRD.

I ask unanimous consent that the article be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD as follows:

[From the Washington Post, Feb. 3, 1999]

DON'T TINKER WITH IMPEACHMENT

(By Robert C. Byrd)

While the lawyers are busy deposing witnesses in the Senate impeachment trial of the president, a number of senators are continuing to work quietly behind the scenes to chart a course that will end the trial with a minimum of political carnage. One route currently being investigated is a so-called "findings of fact," an extravagant novelty by which a simple majority of the Senate could condemn the president's behavior within the framework of the impeachment process without being forced to remove him from office.

This convict-but-don't-evict strategy appeals to some senators who have no appetite for prolonging a trial whose outcome is all but certain. At the same time, they are squeamish about the likelihood of an all-but-inevitable acquittal without having some vehicle to first register their condemnation of the president's actions. No doubt their motives are sincere, and I applaud their ingenuity, but this findings-of-fact proposal is not the answer. While the Senate sits in the impeachment trial, it is not in legislative session. The insertion of such a legislative mutant into the impeachment proceedings would subject the process to some very experimental genetic engineering.

The notion of trumping the articles of impeachment with even a "broad" findings of fact flies in the face of what the Framers of the Constitution intended. They deliberately set the bar high when it came to the vote on articles of impeachment, first by requiring a supermajority of two-thirds of the Senate to convict, and second, by fusing the penalty—removal from office—into the question of guilt.

In voting on articles of impeachment, senators must answer not one but two questions: Is the president guilty or not guilty of committing high crimes and misdemeanors, and, if he is guilty, do his actions warrant removal from office?

This was not a casual coupling on the part of the Framers. Their intent was to force senators to set aside their own passions and prejudices and focus instead on the best interests of the nation. To lift this burden from the shoulders of senators by offering them a way to convict the president without having to accept responsibility for removing him from office would, in effect, bastardize the impeachment process.

Moreover, the aftershocks would be felt long after this impeachment has faded into history. No longer would senators be confined to the articles of impeachment formulated by the House of Representatives. No longer would senators need a two-thirds majority vote to pronounce a president guilty. From this time forward, they could cite the precedent set by the Senate in the 106th Congress as giving them carte blanche to write, and approve by a simple majority, ersatz articles of impeachment cloaked as "findings of fact."

And why stop at findings of fact? If the Senate can ignore the intent of the Framers to combine a guilty verdict with removal from office in an impeachment trial, maybe senators can find a way around the constitutional prohibition against bills of attainder, or legislative punishments.

The Senate impeachment trial takes place in a quasi-judicial setting, and findings of fact would move the Senate headlong into an area reserved for the judicial system, where the Senate, under the separation of powers principle, dares not go.

Findings of fact would become part of a quasi-judicial record that could not subsequently be amended or overturned. Could such a record of findings of fact be later used by an independent counsel before a federal grand jury in an effort to secure an indictment? If this or any president were to be indicted, could such findings be introduced as evidence in a subsequent trial in an effort to sway a jury and bring about a conviction? Who knows what monsters this rogue gene might spawn in future days?

The impeachment process, as messy and uncomfortable as it may be, is working as designed. This is neither the time nor the place for constitutional improvisation.

No matter how sincere the motivation, our nation and our Constitution will not be well served by this sort of seat-of-the-pants tinkering.

A post-trial censure resolution that does not cross the line into legislative punishment is something else. It can and should be considered by the Senate after the court of impeachment has adjourned sine die. Censure is not meaningless, it will not subvert the Constitution, and it will be indelibly seared into the ineffaceable record of history for all future generations to see and to ponder. For those who fear that it can be expunged from the record, be assured that it can never be erased from the history books. Like the mark that was set upon Cain, it will follow even beyond the grave.

Mr. DORGAN. I yield the floor.

THURSDAY, FEBRUARY 4, 1999

[From the Congressional Record]

The Senate met at 1:03 p.m. and was called to order by the Chief Justice of the United States.

TRIAL OF WILLIAM JEFFERSON CLINTON, PRESIDENT OF THE UNITED STATES

The CHIEF JUSTICE. The Senate will convene as a Court of Impeachment. The Chaplain will offer a prayer.

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Gracious God, these days here in the Senate are filled with crucial issues, differences on solutions, and eventually a vital vote in the impeachment trial. We begin this day's session with the question You asked King Solomon, "Ask! What shall I give You?" We empathize with Solomon's response. He asked for an "understanding heart." We are moved by the more precise translation of the Hebrew words for "understanding heart," meaning "a hearing heart."

Solomon wanted to hear a word from You, Lord, for the perplexities he faced. He longed for the gift of wisdom so he could have answers and direction for his people. We are moved by Your response, "See, I have given you a wise and listening heart."

I pray for nothing less as Your answer for the women and men of this Senate. Help them to listen to Your guidance and grant them wisdom for their decisions. All through our history as a Nation, You have made good men and women great when they humbled themselves, confessed their need for Your wisdom, and listened intently to You. Speak Lord; we need to hear Your voice. We are listening. Amen.

The CHIEF JUSTICE. The Senators will be seated. The Sergeant at Arms will make the proclamation.

The Sergeant at Arms, James W. Ziglar, made proclamation as follows:

Hear ye! Hear ye! Hear ye! All persons are commanded to keep silent, on pain of imprisonment, while the Senate of the United States is sitting for the trial of the articles of impeachment exhibited by the House of Representatives against William Jefferson Clinton, President of the United States.

THE JOURNAL

The CHIEF JUSTICE. If there is no objection, the Journal of proceedings of the trial is approved to date.

The majority leader is recognized.

Mr. LOTT. Thank you, Mr. Chief Justice.

ORDER OF PROCEDURE

Mr. LOTT. Mr. Chief Justice, if I could take just a moment to outline how the proceedings will go this afternoon, I think that will answer any questions that Senators may have. We will, of course, continue with the consideration of articles of impeachment. I am not aware of any objections made during the depositions which require motions to resolve. Therefore, I believe the House managers are prepared to go forward with a motion that has three parts. The first would allow for the introduction of the depositions into evidence. The second would call Monica Lewinsky as a witness. And the third part would allow for a presentation period by the parties for not to extend beyond 6 hours. This motion would be debated by the House managers and the White House counsel for not to exceed 2 hours.

In addition, it is my understanding that Senator DASCHLE intends to offer a motion that provides for going directly to the articles of impeachment for a vote.

Mr. DASCHLE. Mr. Chief Justice, will the majority leader yield?

Mr. LOTT. I am glad to yield to the minority leader, Senator DASCHLE.

Mr. DASCHLE. The motion would allow for closing arguments, final deliberations, and then the motions on the two articles.

Mr. LOTT. Having said that, Mr. Chief Justice, in order for the managers to prepare debate for the motions, I ask unanimous consent that the House managers and the White House counsel be allowed to make reference to oral depositions during this debate on pending motions.

The CHIEF JUSTICE. Is there any objection? In the absence of objection, it is so ordered.

Mr. LOTT. Consequently, four votes, then, will occur in the 4 p.m. timeframe today with respect to these four motions.

We will take at least one break—maybe two—between now and then, and that will determine exactly when that series of votes occur—once we begin the process of offering and debating the motions. We will make a determination as to exactly when those provisions would occur.

In addition, if the motion for additional presentation time is agreed to by the Senate, it is my intention to adjourn the trial after today's deliberations over until Saturday for the parties to make their preparations, then to present their presentations of evidence on Saturday, and the trial would then resume on Monday at 12 noon for the closing arguments of the parties.

Again, I remind all of my colleagues to please remain standing at their desks when the Chief Justice enters the Chamber and leaves the Chamber.

I thank my colleagues for their attention. I believe we are ready to proceed, Mr. Chief Justice.

The CHIEF JUSTICE. The Chair recognizes Mr. Manager MCCOLLUM.

MOTION FOR ADMISSION OF EVIDENCE, APPEARANCE OF WITNESSES, AND PRESENTATION OF EVIDENCE

Mr. Manager MCCOLLUM. Mr. Chief Justice, I have a motion to deliver to the Senate.

The CHIEF JUSTICE. The clerk will read the motion:

The legislative clerk read as follows:

MOTION OF THE UNITED STATES HOUSE OF REPRESENTATIVES FOR THE ADMISSION OF EVIDENCE, THE APPEARANCE OF WITNESSES, AND THE PRESENTATION OF EVIDENCE

Now comes the United States House of Representatives, by and through its duly authorized Managers, and respectfully submits to the United States Senate its motion for the admission of evidence, the appearance of witnesses, and the presentation of evidence in connection with the Impeachment Trial of William Jefferson Clinton, President of the United States.

The House moves that the transcriptions and videotapes of the oral depositions taken pursuant to S. Res. 30, from the point that each witness is sworn to testify under oath to the end of any direct response to the last question posed by a party, be admitted into evidence.

The House further moves that the Senate authorize and issue a subpoena for the appearance of Monica S. Lewinsky before the Senate for a period of time not to exceed eight hours, and in connection with the examination of that witness, the House requests that either party be able to examine the witness as if that witness were declared adverse, that counsel for the President and counsel for the House Managers be able to participate in the examination of that witness, and that the House be entitled to reserve a portion of its examination time to reexamine the witness following any examination by the President.

The House further moves that the parties be permitted to present before the Senate, for a period of time not to exceed a total of six hours, equally divided, all or portions of the parts of the videotapes of the oral depositions of Monica S. Lewinsky, Vernon E. Jordan, Jr., and Sidney Blumenthal admitted into evidence, and that the House be entitled to reserve a portion of its presentation time.

Mr. LOTT addressed the Chair.

The CHIEF JUSTICE. The Chair recognizes the majority leader.

Mr. LOTT. I understand that the pending motion is divisible, and as is my right, I ask that the motion be divided in the following manner: The first paragraph be considered division I; the second paragraph be considered division II; and the final paragraph be considered division III.

The CHIEF JUSTICE. It will be divided in the manner indicated by the majority leader.

Mr. LOTT. I thank the Chair.

Mr. DASCHLE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. LOTT. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The CHIEF JUSTICE. Is there any objection? In the absence of objection, it is so ordered.

Mr. LOTT. Mr. Chief Justice, I identified this as the first paragraph to be considered division I. Actually, that should be the second paragraph would be division I, the third paragraph division II,

and the fourth paragraph would be division III. I want that clarification.

The CHIEF JUSTICE. That will be the order.

Mr. LOTT. Also, so that both sides will understand, the motion—there is one motion, but we have divided it into three parts so there will only be 2 hours equally divided, one on each side; not 2 hours equally divided on each one of the three divisions. We had one clarification. I believe we have cleared this up. I believe now we are ready to hear from the managers, Mr. Chief Justice.

The CHIEF JUSTICE. Very well. The Chair recognizes Mr. Manager MCCOLLUM.

Mr. Manager MCCOLLUM. Thank you, Mr. Chief Justice.

As the first one up here today, I have to fiddle with the microphone, I guess; it is testing. I apologize.

Mr. Chief Justice and Members of the Senate, what we have presented to you today is a three-part motion, as Mr. LOTT has described it, and as you have heard read to you. We would like very much, as we always have, to have all the witnesses we want presented here live, as we would normally have in a trial, as the House has always believed that it should have.

We came before you a few days ago recognizing reality and went forward with your procedures to request not 5, not 6, not 12, but 3 witnesses be deposed so that we might be able to, in the discovery process you have allowed us, gain the depositions of those three witnesses. Today we are before you with motions, first, to enter those depositions and the video recordings of those depositions into evidence formally for your consideration because they have now been accomplished; secondly, to request that you provide us with the opportunity to examine Monica Lewinsky live here as a witness on the floor of the Senate, and for you to allow us to present the other two depositions to you in some format; and, if you do not allow us the permission to have Ms. Lewinsky live here to examine as a witness, to allow us to present any or all portions of the depositions of all three of them.

Now, I think that it is eminently fair that we be allowed to present at least one witness live to you, the central witness in the cast of this entire proceeding, and that is Monica Lewinsky. I am not here to argue all of that. My principal discussion with you is going to be on the part dealing with just admitting these into evidence, and then my colleagues, Mr. BRYANT, Mr. HUTCHINSON, and Mr. ROGAN are going to present some complementary discussion about the entire motion as we go through this.

But in the context of all of this I think we have to recognize a couple of things. One is that live witnesses are preferable whether you have depositions or not. These were discovery depositions. We would have liked to have asked for all of them to be live. We were recognizing reality by coming down to one today, and the reasons are fairly straightforward. Some of you have had the privilege, and I am sure you have availed yourself of the opportunity, to look at the videotapes of these depositions, and you see that they are, indeed, what most depositions are. They are discovery. They have long pauses in them. They are not at all like it would be in a trial itself; you don't have the opportunity to fully see or explore with the witness the demeanor, the temperament, the spontaneity, all of

those things that you normally get with an exchange. You have the camera simply focused on the witness. You don't get to have the interaction you get in a courtroom.

Remember, again, that we are dealing here first with your determining whether or not the President committed the crimes of perjury and obstruction of justice and then the question of whether or not he should be removed from office. So I believe and we believe as House managers that you should at least let us have Monica Lewinsky here live for both of those reasons.

I also want to make comments specifically about just admitting these into evidence. There are two obvious reasons why, beyond the question of whether a witness should appear live or whether we should use portions of them in whatever fashion to present to you, they certainly should be part of the record. It seems self-evident. It is part of what you gave us as the procedure to do, and it would seem to me that it should be a mere formality for me to ask, but I cannot assume anything—we certainly do not—that we let these depositions into evidence, and there are two reasons why.

One is the historical basis for this. There has to be a record, not only for you but for the public and for history, of the entire proceeding. There is evidence in these depositions that needs to be a part of the official record, and that evidence is not just the cold transcript, but it is also the videotape with all of the limited, albeit not satisfactory, portion of it that you can see and observe. Especially if you were to conclude we weren't going to have any live witness here or were not going to allow us to present these depositions, you certainly should allow the depositions to be part of the record and the videotape part of it. It is evidence. It is to be examined. It seems self-evident.

But the second point is, as you are going to hear more from my colleagues in just a moment, there is new evidence in these depositions. There is new factual record information that needs to be here for you to decide the guilt or innocence question of the perjury and obstruction of justice charge.

One illustration I would give you—and I am sure my colleagues will give you plenty more—one of them deals with the gift question. We have talked about it a lot out here. If you recall with regard to the question of the gifts, the issue is did the President obstruct justice? Did he decide in the Jones case, in the Jones Court, as a part of his course of conduct of trying to keep from the Court the nature of his relationship with Monica Lewinsky, to keep the gifts hidden?

There is new information in the deposition relative to what happened on the day those gifts were supposedly exchanged between Monica Lewinsky and Betty Currie, about the telephone call. Again, I am not going into the details of that. I will leave that for my colleagues who took the depositions. They can tell you about it. The point is you could enumerate—and they will—new evidence. There is significant relevant new evidence from the Vernon Jordan deposition and from the Sidney Blumenthal deposition. So just on the record alone, just to put the depositions into the record, there can be nothing complete about this trial if we don't at least do that. At least do that.

And so with that in mind, having said that and urging you to do that, I will yield to Mr. Manager BRYANT at this point in time.

The CHIEF JUSTICE. The Chair recognizes Mr. Manager BRYANT.

Mr. Manager BRYANT. Mr. Chief Justice, distinguished colleagues and Senators, I encourage each of you to consider calling Monica Lewinsky as the one live witness in this proceeding. Ms. Lewinsky continues to be, in her own way, an impressive witness. As I spoke to you earlier, she does have a story to tell. After all, no one knows more about the majority of the allegations against the President other than, of course, the President himself.

At her deposition, she appeared to be a different Monica Lewinsky than the Monica Lewinsky whom I had met a week earlier. Unlike before, she was not open to discussion or fully responsive to fair inquiry. She didn't volunteer her story. She didn't tell her story. Rather, she was very guarded in each response and almost protective. Her words were carefully chosen and relatively few. At times, the concepts that she discussed had the familiar ring of another key witness to these proceedings, such as "it wasn't a lie" or "wasn't false," it was "misleading or incomplete." "Truth is what one believes it is and may be different for different people." "Truth depends on the circumstances."

As we progressed through her deposition Monday, I felt more and more like one of the characters in the classic movie "Witness For The Prosecution." I was Charles Laughton. Ms. Lewinsky was Marlene Dietrich. And the President was Tyrone Power. If you are familiar with this movie, you will understand, and if you aren't, you should see the movie.

However, there was and there still remains truth in her testimony. Sometimes, though, just like the President, and now Ms. Lewinsky, it is the literal truth only, the most restricted and stretched definition one could reach. And we all know that the law frowns upon manipulations such as this to avoid telling the complete truth. Her testimony is clearly tinted, some might even say tainted, by a mixture of her continued admiration for the President, her desire to protect him, and her own personal views of right and wrong.

And she was well represented in the deposition by some of Washington's finest defense attorneys who had thoroughly prepared her for all questions, as they should have, as well as being present throughout the deposition to assist her. In fact, the Senator in charge of this particular deposition had to warn these counsel not to coach and not to whisper to her while she was attempting to answer the questions.

If you have seen this deposition, you have witnessed an effective effort by a loyal supporter of the President to provide the very minimum of truth in order to be consistent with her own grand jury testimony, which is legally necessary for her to fulfill the terms of her immunity agreement.

On the perjury article of impeachment, she reaffirmed the specific facts which happened between her and the President on more than one occasion, including November 15, 1995, their first encounter, when the President's conduct fit squarely within the four corners of the term "sexual relationship" as defined in the Jones law-

suit, and this is in opposition to the President's own sworn testimony of denial. But this is one of the clearest examples of the President's guilt of this charge of perjury. It is not about this twisted definition the President assigned to the term "sexual relations." Rather, it is his word against her word as to whether this specific conduct occurred. Even under his own reading of this definition, he agrees that that specific conduct, if it occurred, would make him guilty of sexual relations within that definition. But he simply says I did not do that; she says you did do that—a "he said/she said" case.

But this is why it is important for you to be able to see Ms. Lewinsky in person. In the deposition you will observe her as having to affirm her prior testimony. She had to affirm her prior testimony because that was what was in the grand jury, and because of this, she could not back away at all on her testimony. She couldn't bend it here or there, she couldn't shade it in the President's favor. So what you have is a person, who you may well conclude is still wanting to help the President, having to admit to testimony that would do damage to the President, a very difficult situation for her. But, yet, this same difficulty lends this portion of her testimony great credibility.

With respect to the other article of impeachment on obstruction of justice, her credibility is again bolstered by her reluctance to do legal harm to this President. In the end, though, she does admit that he called her early one morning in December of 1997—actually it was 2 o'clock in the morning—and told her that she was on the witness list. And he told her that she might be able to file an affidavit to avoid testifying. And he told her that she could always use the story that she was bringing papers to him, or coming up to see Ms. Currie.

Now, we know that she did not carry papers to him on these visits other than personal, private notes from her to him. And Ms. Lewinsky indicated in the deposition that she didn't carry him official papers, although she did pass along this cover story—of carrying papers—to her attorney, Mr. Carter. She testified also that she discussed the draft affidavit with Mr. Jordan, changes were made, she offered the President the opportunity to review it, he declined, and, according to Ms. Lewinsky, he never suggested any way that she could file a truthful affidavit, sufficient to skirt—avoid having to testify. This, in spite of his answer to this Senate where he told you that he might have had a way for her to file a truthful affidavit and still avoid testifying in the Jones case.

Yes, you can parse the words and you can use legal gymnastics, but you cannot get around the filing of a false affidavit in an effort to avoid appearing in the Jones case and possibly providing damaging testimony against the President.

Ms. Lewinsky confirmed positively that Ms. Currie initiated a telephone call to her on December 28, 1997, stating words—and this is about the gifts—"I understand you have something for me." Then Ms. Currie drove over to Ms. Lewinsky's home and picked up the box of gifts.

Now, remember, this occurred on the heels of Ms. Lewinsky's conversation with the President that very morning about what she might do with the gifts. The only explanation is that the President

is directly involved, himself, in the obstruction of justice by telling Ms. Currie, who otherwise knew nothing about this earlier conversation, to retrieve these items from Ms. Lewinsky. Ms. Lewinsky said there was no doubt that Ms. Currie initiated the call to retrieve the gifts.

Also recall that the President's testimony from his side was that this conversation occurred earlier in the day with Ms. Lewinsky but that he had told her she would have to turn over whatever gifts that she had. Now, with that advice from the President, it would be totally illogical for Ms. Lewinsky to have then called Ms. Currie that same day and ask her to come pick up and hold these gifts. By calling Ms. Currie, Ms. Lewinsky would have been going against the direct instruction of the President to surrender any and all gifts. The facts, the logic, and common sense tell us all that the President's version is not true and that he obstructed justice here.

Ms. Lewinsky also testified at the deposition about the job at Revlon and obtaining a job offer within 2 days of signing the affidavit. She also denied that she was a stalker, as the President had described her in a conversation with Mr. Blumenthal in January of 1998. She also denied that she threatened the President or attempted to threaten the President into having an affair. She denied that he rebuffed her on the occasion of their first encounter on November 15, 1995. Again, all false statements that the President made to Mr. Blumenthal about her, with knowledge that Mr. Blumenthal would be testifying in a grand jury, thereby obstructing justice.

Now, the former lawyers and judges among us are familiar with what is called the best evidence rule. Stated simply, the court always prefers the best available evidence to be used. In-person testimony is better than a video deposition, which itself is better than the written transcript of a deposition. When all three forms of testimony are available, as they are in this situation, the court will most often require the witness to testify in person over the video deposition or over the written transcript of the deposition.

In closing, I know we all want to work within the Senate rules and we all want to ensure that these proceedings are concluded in a constitutional fashion by the end of next week. It is with this in mind that we propose that Ms. Lewinsky be called as a live witness, the only person called to testify in person, and, further, that we use the two depositions, the video depositions of Mr. Jordan and Mr. Blumenthal, in lieu of their personal attendance. In the event the Senate does not call Ms. Lewinsky, we also ask that we be permitted to use all or portions of her deposition, just as we would the other two depositions.

And finally, several Senators have sent out a letter to the President inviting him to come here and to provide his testimony, if he so chooses. In the event he should accept, Ms. Lewinsky, likewise, should be afforded the same opportunity. They continue to be the two most important and essential witnesses for you and the American people to hear in order to finally—finally—resolve this matter.

Permit us all to return to our districts, and you to your States, and tell our constituents that we considered the full and complete case, including live witnesses and, in your case, made your vote accordingly.

At this time, I yield to my colleague from Arkansas, Mr. HUTCHINSON.

The CHIEF JUSTICE. The Chair recognizes Mr. Manager HUTCHINSON.

Mr. Manager HUTCHINSON. Thank you, Mr. Chief Justice.

Ladies and gentlemen of the Senate, in an effort to be helpful, I have asked the pages to distribute to you some exhibits that I will be referring to as I consider the testimony that we are presenting to you.

There are two aspects to an impeachment trial. There is the truth-seeking responsibility, which is the trial, in my judgment, and then there is the conclusion, the judgment, the verdict, the conviction or the acquittal. If you look at those two phases of a trial, the latter is totally your responsibility. We leave that completely in your judgment.

But the first responsibility of the factfinding of the truth-seeking endeavor, I feel some responsibility in that regard. Hopefully, our presentation is helpful in seeking the truth. I know, as Mr. BRYANT mentioned, that we all want to bring this matter to a conclusion. We want to see the end of this story. We want to have a final chapter in this national drama. I understand that and agree with that. But let's not, because we are in a hurry to get to the judgment phase, let's not let that detract, let's not let that shortchange, nor diminish the importance of the presentation and consideration of the facts, and that is what I think is very important as we consider this motion that is before us.

It is my responsibility to talk about Mr. Vernon Jordan—and the need for your consideration of his testimony—whom we recently deposed. I deposed Mr. Vernon Jordan, Jr., and I recommend that that be received in evidence as part of the Senate record.

I took this deposition under the able guidance of Senator THOMPSON and Senator DODD. The questioning took place over almost 3 hours with numerous and extraneous objections on behalf of the President's lawyers, most of which were resolved.

I believe that the testimony of Mr. Jordan goes to the key element in the obstruction of justice article, and even though it is just one element that we are dealing with, it is a very important element because it goes to the connection between the job search, the benefit provided to a witness, and the solicited false testimony from that witness.

I believe the testimony of Mr. Jordan is dramatic in that it shows the control and direction of the President of the United States in the effort to obstruct justice. I believe the testimony of Mr. Jordan provides new evidence supporting the charges of obstruction and verifying the credibility of Ms. Lewinsky.

The testimony, in addition, is the most clear discussion of the facts reflecting Mr. Jordan's actions in behalf of the President and the President's direction and control of the activities of Mr. Jordan, and therefore they support the allegations under the articles of impeachment. Let me make the case for you.

If you have the President of the United States personally directing the effort to obtain a job for Ms. Lewinsky, which is a benefit to a witness, and simultaneously Ms. Lewinsky is under subpoena as a witness in the case, and thirdly, in addition, the President is

suggesting means to that witness to avoid truthful testimony, as evidenced by the December 17 conversation and the suggestion of the affidavit, the conclusion is that you have a corrupt attempt to impede the administration of justice and the seeking of truth and the facts in the civil rights case.

Now, let me go to the testimony of Mr. Jordan. Has that been distributed now? Good. Let me give a caveat here, particularly to my colleagues, the counselors for the President, that this summary of the portions of the testimony of Mr. Jordan are based upon my handwritten notes. So, please don't blow it up in a chart if there is some discrepancy. I believe this is, in good faith, accurate, but I did not have a copy of the transcript. I was required to go to the Senate Chamber and actually take notes in order to prepare this.

There are a number of areas that I think are relevant and new information and are very important for your consideration. Let me just touch upon five areas.

The first one is the job search and Mr. Jordan being an agent of the President. In the deposition, Mr. Jordan testified that:

> There is no question but that through Betty Currie I was acting on behalf of the President to get Ms. Lewinsky a job.

He goes on to say:

> I interpreted [the request, referring from Betty Currie] it as a request from the President.

Then he testified:

> There was no question that he asked me to help [referring to the President] and that he asked others to help. I think that is clear from everybody's grand jury testimony.

So the question is as to whether the information, the request, came from Betty Currie or whether it came directly from the President, there is no question but that Mr. Jordan was acting at the request of the President of the United States and no one else. In fact, he goes on to say:

> The fact is I was running the job search, not Ms. Lewinsky, and therefore, the companies that she brought or listed were not of interest to me. I knew where I would need to call.

This is very important. There has been a reference, "Well, he was simply getting a job referral, making a referral for routine employment interview by this person, Ms. Lewinsky." But, in fact, it is clear that Mr. Jordan knew whom he wanted to contact. He was running the job search as he testified.

Then he testified:

> Question: You're acting in behalf of the President when you are trying to get Ms. Lewinsky a job and you were in control of the job search?

The answer is:

> Yes.

So that is one area, and it is important to establish that he was an agent for the President.

Secondly, there was a witness list that came out December 5. The President knew about it, at the latest, on December 6, and yet he had two meetings with Mr. Jordan, on December 7 and December 11. In neither one of those meetings was it disclosed to Mr. Jordan that Monica Lewinsky was a witness. I am referring to the sec-

ond page of the exhibits I have handed you in which Mr. Jordan testified to that effect:

Question: And on either of these conversations that I've referenced, that you had with the President after the witness list came out, your conversation on 12/7 and your conversation sometime after the 11th, did the President tell you that Ms. Monica Lewinsky was on the witness list in the Jones case?

Answer: He did not.

Question: Would you have expected the President to tell you if he had any reason to believe that Ms. Lewinsky would be called as a witness in the Paula Jones case?

Answer: That would have been helpful.

Question: So it would have been helpful and it was something you would have expected?

Answer: Yes.

Even though it would have been helpful, he would have expected the President to tell him the information, it was not disclosed to him. The materiality, the relevance, of that is that you have the President controlling a job search, knowing this is a witness in which we are trying to provide a benefit for, and yet the person he is directing to get the job for Ms. Lewinsky, he fails to tell Mr. Jordan the key fact that she is, in fact, a witness, an adverse witness in that case. I think that is an important area of his testimony.

The third area, keeping the President informed—very clear testimony about the development of the job search, the Lewinsky affidavit that was being prepared, and the fact that it was signed. On the third page I have provided to you, Mr. Jordan's testimony:

I was keeping him [the President] informed about what was going on and so I told him.

He goes on further to say:

He [referring to the President] was obviously interested in it.

Then the question, I believe, was:

What did you tell the President when the affidavit was signed?

And his answer:

Mr. President, she signed the affidavit, she signed the affidavit.

So was there any connection between the job benefit that was provided and the affidavit that was signed in reference to her testimony? Clearly, it was something the President not only directed the job search, but he was clearly interested, obviously concerned, receiving regular reports about the affidavit.

Then the fourth area is the information at the Park Hyatt that was developed. To lay the stage for this—and I will do this very briefly—if you look at page 4, you see the previous testimony of Mr. Jordan before the grand jury in March. At that time, the question was asked of him:

Did you ever have breakfast or any meal, for that matter, with Monica Lewinsky at the Park Hyatt?

His answer was:

No.

It was not equivocally, it was indubitably no.

And he was further asked, and he testified:

I've never had breakfast with Monica Lewinsky.

And then on page 5 he goes on, in the May 28 grand jury testimony:

Did you at any time have any kind of a meal at the Park Hyatt with Monica Lewinsky?

His answer was:

No.

So that sets the stage, because in Ms. Lewinsky's testimony, as evidenced by page 6 of your exhibits, she testified in August, after the last time Mr. Jordan testified, very clearly about this meeting on December 31 at the Park Hyatt with Mr. Jordan where they had breakfast. The discussion was about Linda Tripp. Then the discussion went to the notes from the President, and she said, "No, [it was] notes from me to the President." And Mr. Jordan told her, according to her testimony, "Go home and make sure they're not there." That is Ms. Lewinsky's testimony.

It was important to ask Mr. Jordan about this. I assumed that we, of course, would get simply a denial, sticking with the previous grand jury testimony, that unequivocally, no, that meeting never happened: we never had breakfast at the Hyatt.

On page 7, you will notice that Ms. Lewinsky, in her testimony, specifically identified even what they had for breakfast. And so the investigation required us to go out and get the receipt at the Park Hyatt, which is page 8. And the receipt showed that there was a charge on December 31 by Mr. Jordan that included every item for breakfast, that corroborated the testimony of Ms. Lewinsky as to her memory; that is, the omelette they had for breakfast.

And so it is tightening here. The evidence is becoming more clear, unequivocally, that this meeting occurred. And so we had to ask this of Mr. Jordan. And this is page 9. And, of course, I presented the Park Hyatt receipt, I presented the testimony of Ms. Lewinsky, and his testimony, which is page 9:

It is clear, based on the evidence here, that I was at the Park Hyatt on Dec 31st. So I do not deny, despite my testimony before the grand jury, that on [December] 31 that I was there with Ms. Lewinsky, but I did testify before the Grand Jury that I did not remember having a breakfast with her on that date and that was the truth.

But what amazed me was, as you go through the questions with him, all of a sudden he remembered the breakfast but all of a sudden he remembered the conversation in which he before said it never happened at all. And his testimony was, when asked about the notes:

I am certain that Ms. Lewinsky talked to me about [the] notes.

And so I think there are a number of relevant points here. First of all, you reflect back on the testimony of Ms. Lewinsky in this same deposition in which she was asked the question, getting Mr. Jordan's approval was basically the same as getting the President's approval? Her answer: Yes.

And so that is how Ms. Lewinsky viewed this. And this is what was told to her at this meeting at the Park Hyatt. It goes to credibility, it goes to what happened, it goes to the obstruction of justice. It is extraordinarily relevant. It is new information. It is what was developed because this Senate granted us the opportunity to take this further deposition of Mr. Jordan and the other witnesses.

And there are other, you know—the fifth point is that the testimony goes to the interconnection between the job help and the testimony that was being solicited from Ms. Lewinsky.

So why is the presentation necessary? Some of you might even think, "Well, thank you very much for that explanation you have given to us. Now we have all the facts. Let's go on and vote." I do think there is some merit. First of all, this is not all. There is much more there. I just have a moment to develop a portion of Mr. Jordan's testimony that I believe is helpful, but, secondly, it tells a story that has never been told before.

I went and saw the videotape and I was underwhelmed by my questioning, because it is just not the same. I thought we had a dynamic exchange. But then I saw it on videotape and I am nowhere to be found. You get to look at Mr. Jordan, a distinguished gentleman. But it is still helpful not withstanding the difficulty of a video presentation. I respectfully request this body to develop the facts fully, to hear the testimony of Mr. Jordan, to allow him to explain this that tells the story, start to finish, on this one aspect of obstruction of justice that is critical to your determination. And so I ask your concurrence in the approval of the motion that has been offered to you, and at this time I yield to Manager ROGAN.

The CHIEF JUSTICE. The Chair recognizes Mr. Manager ROGAN.

Mr. Manager ROGAN. Mr. Chief Justice, Members of the Senate, yesterday, along with Mr. Manager GRAHAM, I had the privilege of conducting the deposition of Sidney Blumenthal, assistant to the President. That deposition was presided over by the senior Senator from Pennsylvania and the junior Senator from North Carolina. On behalf of the House managers, and I am also sure the White House counsel, we thank them for the able job that they did.

This deposition must be played for Members of the U.S. Senate, and if one Senator has failed to personally sit through this deposition—and every deposition—that Senator is not equipped to render a verdict on the impeachment trial of the President of the United States.

I will address very briefly just a couple of the reasons why I believe Mr. Blumenthal's deposition warrants being played before this body. But to do it, it needs to be put in perspective. Remember what the President of the United States testified to on the day he was sworn in as a witness before the grand jury. He said that in dealing with his aides, he knew there was a potential that they could become witnesses before the grand jury, and that is why he told them the truth. That is the President's own word: the "truth." Mr. Blumenthal's deposition paints a totally different picture and gives a terribly different interpretation of what the President was doing in passing along false stories to his aides.

We have been treated to a number of euphemisms by the distinguished White House counsel during their presentation as to what the President was doing during his grand jury testimony. They described his testimony as "maddening." They have described his testimony as "misleading" and "unfortunate." But the one thing they have never described it as is a lie.

Mr. Blumenthal gave a totally different take on that because he testified under oath that, upon reflection, he believes the President

was not maddening to him, the President lied to him, and he testified so for a very good reason.

Remember, Sidney Blumenthal testified three times before the grand jury in 1998. He testified in February and twice in June. But that testimony was in a vacuum because each time he testified before the grand jury we were still in a national state of, at least presumptively, believing that the President had told the truth. The President had made an emphatic denial as to the Monica Lewinsky story. There was no physical evidence presented to the FBI lab at the time Mr. Blumenthal testified. And Monica Lewinsky was not cooperating with the grand jury. So we know that certain questions were not asked of him during his grand jury testimony because of the status of the facts as we thought they were. But Mr. Blumenthal shed some incredible new light on the testimony that we received yesterday from him.

He said, first of all: After I was subpoenaed, but before I testified before the grand jury, once in February and twice in June—with the President knowing he was about to become a witness before the grand jury, a criminal grand jury investigation—the President never came to him and said, "Mr. Blumenthal, before you go and provide information in a criminal grand jury investigation, I need to recant the false stories I told you about my relationship with Monica Lewinsky."

And he testified about those false stories. He corroborated his own testimony from earlier proceedings. You will recall from the record that the day the Monica Lewinsky story broke in the national press Mr. Blumenthal was called to the Oval Office by the President. The door was closed. They were alone. And this is what the President told Sidney Blumenthal about the revelations that were breaking that day on the national press wire:

> He said, "Monica Lewinsky came at me and made a sexual demand on me."

The President said he rebuffed her. He said:

> I've gone down that road before, I've caused pain for a lot of people and I'm not going to do that again.

The President said Monica Lewinsky threatened him:

> She said that she would tell people they'd had an affair, that she was known as the stalker among her [colleagues], and that she hated it and if she had an affair or said she had an affair then she wouldn't be the stalker any more.

And the testimony goes on. You are all familiar with it at this point.

The President of the United States allowed his aide to appear three times before a Federal grand jury conducting a criminal investigation, and never once did the President of the United States inform that aide before providing that information to the investigatory body—never once—asked or told the aide that that was false information. Mr. Blumenthal's testimony demonstrates that the President of the United States used a White House aide as a conduit for false information before the grand jury in a criminal investigation.

I just want to make one other brief point before I close this presentation because I think it needs to be said. I am in no position to lecture any of the distinguished Members of this body on what

the founders intended in drafting the Constitution. I believe all of us in this room have an abiding respect for that. But there are a couple of points that need to be made. I believe there is a reason the founders drafted a document that allows us the opportunity in every trial proceeding in America to confront and cross-examine live witnesses. It is because that gives the trier of fact the opportunity to gauge the credibility and the demeanor of the witnesses. We have discussed that at length during these proceedings.

But one thing we haven't discussed and one thing that I think is important—not from the House managers' perspective, but from the perspective of history and the history that will be written on the ultimate verdict in this case—and that is the idea of open trials. There is a reason why the founders looked askance on the concept of secret trials and closed trials. There is a reason why in every courtroom across the land trials are open. They are open. It is an open process. The light of truth is allowed to shine in the courtroom and from the courtroom because we don't trust the credibility of a verdict if it is done in secret. What would be the verdict on this proceeding if the judgment of this body is based upon testimony and witnesses, on videotapes, locked in a room somewhere, available only to the triers of fact without the public being privy to what was made available?

Ladies and gentlemen of the Senate, I would urge you, not for the sake of the managers and not for the sake of the presentation of the case, but for the sake of this body and for the verdict of history that will be written, to please allow this to be a public trial in the real sense. If the witnesses will not be brought here live before the Senate, please allow the doors of the Senate to be open so that the testimony upon which each of you must base your verdict will be made available not only to all 100 Senators, but will be made available to those who will make the ultimate judgment as to the appropriateness of the verdict, the American people.

Mr. Chief Justice, I yield to Mr. Manager GRAHAM.

The CHIEF JUSTICE. The Chair recognizes Mr. Manager GRAHAM.

Mr. Manager GRAHAM. Mr. Chief Justice, how much time?

The CHIEF JUSTICE. Your colleagues have consumed 37 minutes.

Mr. Manager GRAHAM. Ladies and gentlemen of the Senate, I do not have a whole lot to add, but I would like to recognize this thought: That we have learned a great deal in these depositions. Thank you for letting us have them. We didn't get everything we wanted—and I think that is a fair statement—but who does in life? But we do appreciate you giving us the opportunity to explore the testimony of these witnesses because I think it would be helpful in setting the historical record straight.

Mr. Blumenthal, to his credit, said the President of the United States lied to him. The President of the United States did lie to him. The President of the United States, in his grand jury testimony, denied ever lying to me. That should be historically significant and should be legally significant. Mr. Blumenthal, to his credit, said the President of the United States tried to paint himself as a victim to Ms. Lewinsky. That would be legally and historically

relevant and it will mean a lot in our arguments and it will be something you should consider.

This has been a good exercise. Thank you very much for letting us depose these witnesses.

I was not at the other two depositions, but I was at Mr. Blumenthal's deposition, and I can assure you we know more now about what the truth is than before we started this process. I hope at the end of the day it is our desire to get to the truth that guides us all. We are asking for one live witness, Ms. Lewinsky.

Let me tell you, I know how difficult it is to want this to go on given where everybody is at in the country. Trust me, I want this to end as much as you do. However, there is a signal we will send if we don't watch it. We will make the independent counsel report the impeachment trial, and I am not so sure that is what the statute was written for.

The key difference between the House and the Senate is that the White House never disputed the facts over in the House. They never disputed the facts. They called 15 witnesses to talk about process and about the interpretations that you would want to put on those facts. In their motion to the Senate, everything is in dispute. It is a totally different ball game here. That is why we need witnesses, ladies and gentlemen, to clarify who said what, who is being honest, who is not, and what really did happen in this sordid tale.

Ms. Lewinsky comes before us because the allegations arise that the President of the United States, with an intern, had an inappropriate workplace sexual relationship that was discovered in a lawsuit where he was a defendant. This was not us or anyone else trying to look into the President's private life for political reasons or any other reason. It was a defendant in a lawsuit asking to look at the behavior of that defendant in the workplace, something that goes on every day in courtrooms throughout the country.

And is it uncomfortable? Yes, it is uncomfortable. If you have ever tried a sexual harassment case, an assault case, or a rape case, it is very much uncomfortable to have to listen to these things. But the reason that people are asked to do what you are asked to do by the House managers is that the folks that are involved represented themselves much better than lawyers talking about what happened. And if you find it uncomfortable listening to Ms. Lewinsky, think how juries feel, think how the victims feel, think how somebody like Ms. Jones must feel not to be able to tell the story of the person they are suing.

That is a signal that is going to be sent here that will be a devastating and bad signal. If we can't stomach it, if we can't stomach listening to inappropriate sexual conduct, why do we put that burden on anyone else?

Give us this witness. We will do it in a professional manner. We will focus on the obstruction. We will try to do it in a way not to demean the Senate. We will try to do it in a way not to demean Ms. Lewinsky. We will try to do it in a way to get to the truth. Please give us a chance to present our case in a persuasive fashion, because unlike the House, everything is in dispute here.

Thank you very much. I reserve the remainder of my time.

The CHIEF JUSTICE. The House managers reserve the remainder of their time.

The Chair recognizes Counsel CRAIG.

Mr. Counsel CRAIG. Mr. Chief Justice, ladies and gentlemen of the Senate, I have divided my presentation into three parts that fortunately correspond to the three parts of the motion that is before you today.

I would like, first, to argue against admitting videotape evidence into the record of this trial. Second, I would like to argue against calling live witnesses to this trial. And third, I would like to argue against the proposed presentation of videotape and deposition testimony for Saturday.

I sound rather negative. I don't mean to be negative. But we don't find much to recommend the three proposals that the House managers have brought before you today.

Let me begin by saying that we support the idea of admitting written transcripts of deposition testimony of these three witnesses into the record of this trial. But we believe that it would be a terrible mistake and wholly redundant to put the videotape testimony into that record as well, particularly if that means releasing any of this videotaped material to the public.

We can only call the Senate's attention to section 206 of Senate Resolution 30, which instructs the Secretary of the Senate "to maintain the videotaped and transcribed records of the deposition as confidential proceedings of the Senate." That was the intention of the Senate when you first passed Resolution 30. If this decision as proposed today will result in overruling that rule, if there is any risk or danger of a wholesale, unconditional, and unlimited release of these videotapes for the public through the national media, just as was done by the House of Representatives when it released all the Starr materials, we think it is a bad idea.

In retrospect, most people believe that it was a mistake for the House to release those materials—and those materials included videotaped grand jury testimony—and we believe it would be a mistake for the Senate, at the request of the House managers, to do the same thing with these videotaped materials now. To release these videotapes generally to the public—which will happen if they are put into the record—inevitably will surely cause consternation among those members of the public, particularly parents who do not choose to spend one more moment, much less hours and even days, thinking about the President's relationship with Monica Lewinsky and explaining it again to the children. Placing these videotapes in the formal record of this trial will be one step closer to releasing the tapes to the public for immediate broadcast. If that release occurs, it will produce an avalanche of unwelcome deposition testimony into the public domain.

The videotaped testimony of Ms. Lewinsky, Mr. Jordan, and Mr. Blumenthal will be forced, hour after hour, unbidden and uninvited, into the living rooms and family rooms of the Nation. Make no mistake about what would happen; we have seen it before. We can expect to see the networks play these tapes, wall-to-wall, nonstop, and without interruption, over the airwaves. This would be a repeat of what happened when the case first came to the House of Representatives. For the Senate to decide to include

the videotapes of this deposition testimony, as opposed to the written transcripts in the formal record of this trial, would have the same effect and could result in this kind of release. The picture, voices, and words on these tapes would flow directly and irreversibly into the life of the Nation. In addition, these videotapes will, no doubt, be edited and excerpted and cut and spliced, and the materials will not only be overused, they will also be inevitably abused.

To take advantage of these witnesses, I submit to you, in this way is wrong—whether in the context of the grand jury proceeding where confidentiality is promised, or whether testifying under subpoena in an impeachment trial in the Senate. It is unfair to the witnesses, unfair to the public, unfair to the Senate and, we submit, unfair to the President as well.

We do not object to release of the written transcripts of this testimony; we support that release. And we believe that that satisfies any reasonable requirement of public access to the information. The public's right to know and understand what is happening in this impeachment trial would be respected. But we should learn a lesson from America's experience in the House of Representatives: More is not always better.

It is not wise or right for the House or the Senate to perform the function of a mere conveyor belt simply and automatically transmitting unfiltered evidence into the public domain. It is not wise or right to suspend judgment and turn over for public viewing the videotaped testimony of private witnesses who are forced to appear and testify under compulsion. It is simply wrong to release videotapes of such testimony for cable news networks or for friends or foes to use as they want. This, I submit, is profoundly unfair to the witnesses.

One can only ask, who really benefits from this kind of practice? Is it really in the public interest for the Senate to issue and serve a subpoena on private individuals like Monica Lewinsky, or Vernon Jordan, to summon these citizens before the Senate to compel their testimony before video cameras and then to take that videotaped testimony, without any consideration or thought about the legitimate personal concerns or interests of those witnesses, and release those videotapes of that testimony for the national media? Is it really in Ms. Lewinsky's interest to do this, or in the interest of her family or her future? Is it fair to Mr. Jordan or to his family to subject him to this kind of treatment? Is it really in the Senate's interest? Is it in the interest of the Constitution, or the Presidency, or of the American people to have a videotape of Monica Lewinsky readily available for all the world to see and to hear?

What about those individuals who are, in fact, truly innocent but who will surely suffer if these videotapes are released to the public for permanent residence in the public domain? What about the members of the President's immediate family? How can the Senate contemplate releasing Ms. Lewinsky's videotaped testimony, discussing her relationship with the President, without giving at least some thought to the impact that this might have on the members of that family? You can be sure that the release of this testimony and of this videotape will only add to their agony, embarrassment, and humiliation.

I only hope that those who purport to be concerned about the moral damage that can be attributed to the President's conduct and example are equally mindful of the hurt that will be inflicted on innocent people by the mere broadcasting of these videotapes and of their existence in perpetuity in the public record and the public domain.

We think it is perfectly appropriate and, no doubt, helpful to many Senators and staffers to be able to watch the deposition testimony of these three witnesses on videotape as part of the Senate's trial proceeding, but that function has now been satisfied. There is no need for these tapes to be broadcast to the public, as the public knows better than anyone. It is for that precise reason, one suspects, that three-quarters of those polled, according to a survey reported in yesterday's New York Times, oppose releasing the videotaped testimony of Ms. Lewinsky and Mr. Jordan and Mr. Blumenthal to the public.

I urge you to not vote to place these materials into the record of this trial without giving careful consideration to these interests and to these concerns. These are not just the interests and concerns of the President and the members of his family. They are not just the interests and concerns of these three witnesses and the members of their families. I think they are also the interests and concerns of the American people as well.

The bottom line, ladies and gentlemen of the Senate, is simple: You do not need these videotapes released to do your constitutional duty, and the people we all work for do not want these videotapes released to them. Please draw the line.

As for the issue of witnesses, we believe that there is no useful purpose served by calling live witnesses to testify before the Senate in this trial. Live witnesses will not advance the factual record. We have known the facts for many months. Nor will live witnesses give us new insight into the witnesses themselves. Sidney Blumenthal's fourth appearance, Vernon Jordan's seventh appearance, and Monica Lewinsky's twenty-third appearance told us really very little that was new. I take issue with the presentation of the managers. Why should we expect Mr. Blumenthal's fifth appearance, Mr. Jordan's eighth appearance, and Ms. Lewinsky's twenty-fourth appearance to add anything more? Live witnesses will simply not serve the interests of fairness. They will not serve the interests of the American people, and they will not serve the interests of the Senate. In fact, live testimony from these three individuals—or from Ms. Lewinsky alone—will be worse than an exercise in redundancy and will be an exercise in excess. It will only postpone the end of the trial that nobody wants anymore and that no one wants to prolong any longer. There is every reason, finally and at long last, to bring the trial to a close. And calling live witnesses, I submit, will not be quick, and it will not be easy. It will prevent the Senate from keeping its pledge to bring this trial to a conclusion by February 12.

Because live witnesses are unnecessary for the resolution of this matter, perhaps the most important question for the Senate to consider and resolve itself is whether calling live witnesses might, in fact, tarnish the Senate as an institution. This is a question that only you can resolve, the Members of the Senate. And you certainly

need not take instructions from me or from any of us at this table on that subject. But the question is worth asking: Will the public's respect for the Senate and for the Members of this body be enhanced by calling live witnesses? Does the Senate really feel a need or an obligation or some requirement to bring Ms. Lewinsky to sit here and testify in the well of this historic Chamber?

The managers first argued that live witnesses were necessary to resolve conflicts of testimony, that the only way to reconcile disparities and differences in testimony was to bring in live witnesses. Today we know that is not true. You gave the managers an opportunity to resolve those conflicts and find new facts. But most of the critical conflicts that existed a week ago still exist today.

Calling Monica Lewinsky to testify a 24th time is not likely to resolve those conflicts. Then we were told that we must look into the eyes of the witnesses and observe their demeanor to make a judgment as to credibility. But you now have the opportunity to observe almost every major witness as he or she testifies. Precious little is left to the imagination or to guess or to question the credibility, and you certainly have a better chance of observing demeanor through the videotape than you do with a witness here on the floor of the Senate.

We are now given a third reason why live witnesses are absolutely necessary to this trial to go forward; that is to "validate" the testimony of these witnesses.

According to Mr. Manager HYDE, the depositions have been successful, but "what we need now is to validate the record that already exists under oath about obstruction of justice and perjury."

Ladies and gentlemen of the Senate, we on this side of the House have never challenged that record. We have always agreed that the witnesses said what the record says they said, and that record needs no further validation through the live testimony of individual witnesses.

Those of us who have made a career of being lawyers and trying cases probably understand better than anyone else why the House managers are so adamant in their desire to call live witnesses. It keeps the door open if only for a few more days. As Mr. Kendall observed last week, like Mr. Micawber in "David Copperfield," they hope against hope that something may turn up.

As an abstract proposition, the importance of live witnesses cannot be disputed. They are important to prosecutors who are trying to make a case. They are important to defense lawyers who are trying to defend a case. Trial lawyers know better than anyone that live witnesses can make all the difference in a trial. There is just no disputing that point.

But that abstract question is not the real live question that the Senate has before it today. The issue before the Senate today is different. It is more specifically whether these three witnesses, each one of whom has testified on multiple occasions under oath before the Federal grand jury, or have been interviewed on multiple occasions by lawyers and law enforcement officers, would have anything whatsoever to add to this trial if they were to appear before you in person. The answer to that question is clearly no.

The answer is no—not because Ms. Lewinsky has already been interviewed so many times and has testified so many times, not be-

cause she was just interviewed a few weekends ago, and not because she appeared and answered the House managers' questions under oath for many hours just 4 days ago. The answer is no because if you watch the videotape of her testimony, and if you look at the videotape of the testimony of Mr. Jordan and Mr. Blumenthal, you realize and you know deep in your bones that calling these witnesses to testify personally before you in the Senate in detail would simply be a massive waste of this Senate's time.

You already know the facts. You have already read what they have had to say on many different occasions. And you have already seen and read their most recent testimony under oath. It simply can no longer be credibly argued that you need testimony from these witnesses to "flesh" out the factual record or to resolve conflicts or to fill in the evidentiary gaps or to look the witnesses in the eye and assess their credibility. All that has been done many times before by many lawyers before and by many law enforcement officers many months ago. And then it was done just recently again by House managers as they took their deposition testimony last week.

The Senate has given the managers every opportunity to persuade the Senate and the Nation to see this case the same way they see it. And the managers have run a vigorous and energetic campaign aimed at capturing the Senate and changing American public opinion. How many times do you know of where the prosecutors base their case on a multimillion-dollar criminal investigation involving multiple interrogations of witnesses, producing 60,000 pages of documents, generating 19 boxes of evidence, when the prosecutors are allowed to go back to those witnesses again and again and again in an effort to maybe—somehow maybe—in some way to make their case, covering the same territory, presenting the same evidence, hour after hour? In fact, in our view, the Senate has indulged the managers. And despite the misgivings of many Senators, the Senate has leaned over backwards to accommodate the managers.

We believe it is time for the Senate to say it is time to vote. Given the state of the record compiled by the Office of Independent Counsel, given the discovery that has already been given to the managers, the evidence is as it is, and it is not likely to change in any significant way. The moment of truth can no longer be avoided, and the Senate should move to make the decision.

President Clinton is not guilty of having committed high crimes and misdemeanors. He should not be removed from office. The Senate must act now to end this impeachment trial finally and for all time.

Finally, as to the proposed proceedings for Saturday, Senate Resolution 30 gives the House managers and White House counsel an opportunity to "make a presentation" to the Senate employing all or portions of the videotape of the deposition testimony. And the final portion of the motion involves a request that the parties be permitted to present before the Senate for a period of time not to exceed a total of 6 hours equally divided all or portions of the parts of the videotapes of the oral depositions of Ms. Lewinsky, Mr. Jordan, and Sidney Blumenthal that have been admitted into evidence.

We are convinced that such a presentation would provide no new information to the Senate and would only serve to delay this trial and further burden the service of the Senate.

We also believe that there is a potential for unfairness that lurks in the process of excerpting and presenting portions of individual videotape testimony out of context. We remain committed to the notion that to be fair to all sides, the videotapes, if they are used, must be shown in their entirety or shown not at all. And, above all, we do not believe these videotapes should be released to the public in any form which would of course occur if they were used as part of the presentation on Saturday.

Senators have themselves been reviewing the videotaped deposition testimony of the witnesses at great length and in great detail over the past 4 days. It appears to us that the Senate has been very conscientious in carrying out this assignment. And within a matter of days, Senators will listen to final arguments from each side.

Is there really a need for an intermediate stage involving the playing of videotape testimony of the very same evidence? After conscientiously reviewing the videotape testimony and reading the transcripts of that testimony, should Senators now be required to sit and watch and listen to more of the same? Such an exercise would only be cumulative and causes us to ask what the point would be. We just do not think that additional presentations of the same evidence that Senators have been reviewing over the past few days will be that helpful to the process.

Presumably, the House managers seek to present a collection of snippets—the greatest hits from the deposition testimony of Ms. Lewinsky, Mr. Jordan, and Mr. Blumenthal. This would be unfortunate because it would require a full response from the White House—presumably our own collection of snippets aimed at putting the managers' excerpts into some kind of context. This would be a dual of snippets and excerpts, and presumably each side in the course of the presentation would conduct a guided tour for the Senate through that evidence, although I must say that the language of the motion leaves that open to some doubt.

The language of the motion provides no opportunity for argument, no opportunity for explanation, and simply talks about playing a total of 6 hours equally divided, all or portions of the parts of the videotapes.

Is this the way your time is best used in this enterprise? We fully understand the House managers' desire—and even share it—to highlight and explain the importance of certain testimony that came out of the depositions over the past few days. But in truth, there are no bombshells in that testimony. There is no dynamite. There are no explosions. We believe that highlighting, explaining, and calling attention to those parts of that testimony that are important can be done with the transcripts, and the transcripts more than satisfy the requirement that we see, or the need to conduct that function, carry out that function. That is what ordinary lawyers do when they are trying cases or arguing in front of a jury.

To the extent that the managers wish to call attention to various aspects of the testimony, we think they will have ample time to do so in the course of their final argument. Traditionally, that is the

time to do that, during closing arguments, the time for advocates in a trial to marshal their evidence, to summarize and comment on that evidence; and to allow the managers to go through the deposition testimony first would be tantamount to giving the managers two closing arguments.

In summary, Mr. Chief Justice, I have a point of parliamentary inquiry I would direct to the Chair having to do with the first paragraph, the first section of the proposed motion submitted by the House managers. Is there any way that the Senate can deal first with the question of the first question being bifurcated? Is there any way the Senate can bifurcate this first question and a separate vote be taken first on including the transcripts of the deposition testimony in the record of the trial and, second, whether the videotapes should also be included in the record?

The CHIEF JUSTICE. A preemptive motion to that effect could be made by any Senator.

Mr. Counsel CRAIG. Thank you.

RECESS

The CHIEF JUSTICE. The majority leader.

Mr. LOTT. Mr. Chief Justice, I ask unanimous consent that we take a 15-minute recess. I think we can address that question during this recess.

There being no objection, at 2:22 p.m. the Senate recessed until 2:44 p.m.; whereupon, the Senate reassembled when called to order by the Chief Justice.

The CHIEF JUSTICE. The Chair recognizes the majority leader.

Mr. LOTT. Mr. Chief Justice, I believe that there is time remaining for arguments by the White House counsel, and then at their conclusion, by the House managers. After that, I will make an attempt to explain to the Senate exactly what is in the motions, because there seems to be some degree of question about that. Then we will be prepared to have a series of votes at that time. I still believe we should be able to start that around 4 o'clock. I yield the floor.

The CHIEF JUSTICE. The Chair recognizes Mr. Craig.

Mr. Counsel CRAIG. Mr. Chief Justice, we have completed our presentation. Thank you.

The CHIEF JUSTICE. The House managers have 19 minutes remaining.

The Chair recognizes Mr. Manager BRYANT.

Mr. Manager BRYANT. Mr. Chief Justice, I will respond briefly, to be followed by Mr. Manager MCCOLLUM, who will be followed by Mr. Manager HUTCHINSON.

Let me first talk quickly about Mr. Craig's argument about disagreeing on the admission of the video depositions. He cited the House proceedings, and we want to be clear as to our belief of our position in the House in this process, as the accusatory branch of the Government in this process, and I think that is the case because we vote by a majority vote, we chose to bring forward the case that we felt established the allegations of impeachment.

There was no conflict of evidence brought forward from those House proceedings. This evidence was not challenged until we came to this body, the appropriate body, for resolving the evidence

and trying the case, as you will. That is evidenced by the constitutional requirement that you must vote conviction based on two-thirds of your body. But the actual conflict was not presented until we arrived here in the Senate. By allowing us to have this procedure of taking depositions, we have focused more clearly on resolving those particular conflicts.

I might add also in response to Mr. Craig's statement that the Starr Report was released out to the public and, as a result of that, there may be danger here in releasing these video depositions. But let me tell you about the House vote on the Starr Report. Seventy percent of the Democrats supported the release of those documents; 100 percent of the Democratic leadership in the House supported the release of those documents. So it was not just one party over the other party that threw these out to the public. It was a decision that was a bipartisan decision on the part of the House.

I might add, that is not our interest in doing this with video depositions. We are open to your process, but we must conclude by those who would argue that perhaps you should open your debate to the public, we don't see the consistency in trying to take a very important part of the evidence in this case and not opening that to the public. So we are at your wishes. It is our desire to make the presentation using all or portions of these video depositions and to use those as fully as we would any other evidence.

With that said, I ask Mr. Manager MCCOLLUM to follow me.

The CHIEF JUSTICE. The Chair recognizes Mr. Manager MCCOLLUM.

Mr. Manager MCCOLLUM. Thank you very much, Mr. Chief Justice.

If you listen to the White House counsel, the simple fact is, they don't want a public display in any form of any testimony here in front of the Senate. They don't want the public to have an opportunity to have a public trial.

Now, maybe an impeachment trial is not exactly the same as any other trial, but in the history of the Senate, it has been a basically open process, except for the voting. It has been an opportunity for witnesses to come before you. It has been an opportunity for people to be heard. It has been an opportunity for the public to hear the people who want to speak.

White House counsel didn't just say, "We don't want live witnesses here." They said, "We don't want you to be able to admit even into evidence the videotape that might become public, and we don't want you to be able to show any portion, or all even, of the videotapes of the depositions that have been taken."

If a Republican had gotten up and said that, we would have probably gotten hung on some political petard for that. The reality is, the public has business here. This is a trial. I suggest and submit to you, we need—you need—the opportunity to hear these witnesses one way or the other—preferably Monica Lewinsky live. We need to bring closure in this matter.

How can the public come to closure? How can those who feel so emotionally, as we know they do, around the country, come to closure on this—which we need for them to do as much as you need to resolve and we need to have you resolve the questions before you—how can they come to closure? How can we all come to closure

without an opportunity for the public to participate, in one way or another, in seeing the credibility, judging the witnesses, judging the truth of this?

Let me remind you, there is nothing in these depositions that is salacious material, so it has been constrained very delicately—nothing at all that would be offensive to anybody.

In addition, think about this for a minute. When it comes to calling Monica Lewinsky live, when it comes to letting the deposition be presented, if you believe that the President did not break the law—not talking about whether he should be removed from office—if you believe he did not break the law, that he did not commit the crimes of perjury and obstruction of justice, that means you must have concluded that Monica Lewinsky was not telling the truth when she said about the false affidavit, "I knew what he meant," when she said about the concealment of the gifts, "Betty called me," when she said about the nature of their relationship, "It began the night we met," and many other things.

You, I would submit, my colleagues in the Senate, have a moral obligation to allow Monica Lewinsky to come here and be judged on her credibility, not just by you but by the public, by all of us, as a live witness. Certainly, barring that, you have an obligation to have the credibility on the issues of guilt or innocence of these crimes be judged by everybody, at the very least, by the presentation of these videos in a public, open format here in the Senate before everybody. I think it is a powerful question you have to resolve.

I submit one last point. For those of you who do believe the President is guilty of these crimes, you have an obligation to let the showing of these depositions, or the presentation preferably of Monica Lewinsky live, so those who maybe don't think the same way you do have an opportunity for that credibility to be judged. Only if the witnesses are present can they be judged that way.

The most remarkable thing about the White House presentation may have been, just a moment ago, the admission that normally in trials this is exactly what happens. And I present to you the suggestion, this is exactly what should happen here today.

I yield to Manager HUTCHINSON.

The CHIEF JUSTICE. The Chair recognizes Manager HUTCHINSON.

Mr. Manager HUTCHINSON. Thank you, Mr. Chief Justice.

Very briefly, I was asked to respond to the last argument by counsel for the President in regard to their objections on the evidentiary presentation of 6 hours under the motion, which would be, I believe, on Saturday. After 6 days of opening statements in this trial, and after 2 days of questions and answers, and then we had, I believe, 2 days of motion arguments, you have heard from all the lawyers more than you ever wanted to hear. I don't think that it is too much to ask, for 6 hours of discussion of the evidentiary record that was developed from the deposition testimony. I think that is reasonable.

It has been argued that it is going to be snippets, it is going to be a battle of snippets.

If this motion is passed, it will be introduced into evidence, and each side will have an opportunity to discuss that evidence, to con-

trast it with other individuals' testimony, and to present it in a fashion that is most understandable. It is equally divided; therefore, both sides can present their case. That is how it is traditionally done. There is nothing unusual about that, and certainly the White House defense lawyers will be very vigilant in making sure that it is fairly presented.

There was objection that was made—and this is overlapping a little bit—as to the public release of the video. Our motion really goes to introducing into evidence. It is up to you as to how that evidence is handled. Customarily in a trial, when something is entered into evidence, that is released. But there was concern expressed about the witnesses, about Mr. Jordan and the fact that he has testified and now it would be made public. I recall the White House defense lawyers, on this screen over here, put Mr. Jordan's video up there for the world to see. I believe they also brought in other witnesses on video that was put out there for the whole world to see. So I think it is a little bit late to come in and say that that should not be subject to public discussion.

I think that the motion that is presented is reasonable. It is fair. They say there is nothing of dynamite or there is nothing explosive. Then if that is the case, there should not be any objection to the discussion and the fair playing of that evidence. But in fact much of this is due because it was not developed after the President made his grand jury appearance. Many of these witnesses testified early. They were not able to testify again after the President's grand jury testimony. So I think there are new areas that have certainly been developed.

With that, Mr. Chief Justice, I yield back.

The CHIEF JUSTICE. Will the House managers yield back?

Mr. Manager HUTCHINSON. Yes, Mr. Chief Justice.

The CHIEF JUSTICE. The Chair recognizes the majority leader.

Mr. LOTT. Mr. Chief Justice, then all time has been yielded back on both sides?

The CHIEF JUSTICE. Yes.

Mr. LOTT. We had expected this would take a little bit longer. [Laughter.]

Mr. Chief Justice, I believe it would be of interest to the Senators that we give just a brief explanation of the motions. I believe Senator DASCHLE may have an additional motion that he would like to offer. So that we can make sure he has had the time to prepare that, and how we would go into the voting procedure, I suggest the absence of a quorum.

The CHIEF JUSTICE. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. LOTT. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The CHIEF JUSTICE. Without objection, it is so ordered.

Mr. LOTT. Mr. Chief Justice, very briefly, I believe that Senator DASCHLE, or one of his Senators, will have a peremptory motion that they will offer, and it will be read by the clerk; then there will be a vote on that. Then there will be a vote on the 3 divisions that have been identified—the 3 votes on the one motion—and then I believe Senator DASCHLE will also have a motion; we will go

straight to debate and closing arguments and the vote on the articles of impeachment. Is that a correct recitation?

I yield to Senator DASCHLE.

Mr. DASCHLE. Mr. Chief Justice, I appreciate the Senator yielding. As I understand it, Senator MURRAY's motion will relate to the third motion, which is, as I understand it, the motion that allows for video excerpts to be used. Her motion would restrict both managers to transcripts, written transcripts. I am not sure in which order her motion should be offered, but since it relates to the third one, perhaps it would be in concert with that motion.

The CHIEF JUSTICE. This is the motion to debate and divide the third motion.

Mr. DASCHLE. That's correct.

Mr. LOTT. We would vote on the first paragraph, the second paragraph, and then there would be a motion at that point by Senator MURRAY and a vote on that, and a vote then on the third division, and then a vote on the articles of impeachment itself.

VOTE ON DIVISION I

The CHIEF JUSTICE. The question is on Division I. The clerk will read Division I.

The legislative clerk read as follows:

The House moves that the transcriptions and videotapes of the oral depositions taken pursuant to Senate resolution 30 from the point that each witness is sworn to testify under oath to the end of any direct response to the last question posed by a party be admitted into evidence.

The CHIEF JUSTICE. The yeas and nays are required.

The clerk will call the roll.

The legislative clerk called the roll.

The yeas and nays resulted—yeas 100, nays 0, as follows:

[Rollcall Vote No. 9]

[Subject: Division I of House managers motion regarding admission of evidence]

YEAS—100

Abraham	Coverdell	Hatch
Akaka	Craig	Helms
Allard	Crapo	Hollings
Ashcroft	Daschle	Hutchinson
Baucus	DeWine	Hutchison
Bayh	Dodd	Inhofe
Bennett	Domenici	Inouye
Biden	Dorgan	Jeffords
Bingaman	Durbin	Johnson
Bond	Edwards	Kennedy
Boxer	Enzi	Kerrey
Breaux	Feingold	Kerry
Brownback	Feinstein	Kohl
Bryan	Fitzgerald	Kyl
Bunning	Frist	Landrieu
Burns	Gorton	Lautenberg
Byrd	Graham	Leahy
Campbell	Gramm	Levin
Chafee	Grams	Lieberman
Cleland	Grassley	Lincoln
Cochran	Gregg	Lott
Collins	Hagel	Lugar
Conrad	Harkin	Mack

McCain	Rockefeller	Stevens
McConnell	Roth	Thomas
Mikulski	Santorum	Thompson
Moynihan	Sarbanes	Thurmond
Murkowski	Schumer	Torricelli
Murray	Sessions	Voinovich
Nickles	Shelby	Warner
Reed	Smith (NH)	Wellstone
Reid	Smith (OR)	Wyden
Robb	Snowe	
Roberts	Specter	

The CHIEF JUSTICE. On this vote, the yeas are 100, the nays are 0. Division I of the motion is agreed to.

VOTE ON DIVISION II

The CHIEF JUSTICE. The next vote will be on Division II of the motion. The clerk will read Division II of the motion.

The assistant legislative clerk read as follows:

Division II: The House further moves that the Senate authorize and issue a subpoena for the appearance of Monica S. Lewinsky before the Senate for a period of time not to exceed eight hours, and in connection with the examination of that witness, the House requests that either party be able to examine the witness as if the witness were declared adverse, that counsel for the President and counsel for the House Managers be able to participate in the examination of that witness, and that the House be entitled to reserve a portion of its examination time to reexamine the witness following any examination by the President.

The CHIEF JUSTICE. The yeas and nays are automatic. The clerk will call the roll.

The assistant legislative clerk called the roll.

The yeas and nays resulted—yeas 30, nays 70, as follow:

[Rollcall Vote No. 10]

[Subject: Division II of House managers motion regarding appearance of witnesses]

YEAS—30

Abraham	Frist	Lugar
Ashcroft	Gramm	Mack
Bond	Grams	McCain
Bunning	Hagel	McConnell
Burns	Hatch	Murkowski
Cochran	Helms	Nickles
Craig	Hutchinson	Santorum
Crapo	Inhofe	Smith (NH)
DeWine	Kyl	Specter
Fitzgerald	Lott	Thompson

NAYS—70

Akaka	Chafee	Feinstein
Allard	Cleland	Gorton
Baucus	Collins	Graham
Bayh	Conrad	Grassley
Bennett	Coverdell	Gregg
Biden	Daschle	Harkin
Bingaman	Dodd	Hollings
Boxer	Domenici	Hutchison
Breaux	Dorgan	Inouye
Brownback	Durbin	Jeffords
Bryan	Edwards	Johnson
Byrd	Enzi	Kennedy
Campbell	Feingold	Kerrey

Kerry
Kohl
Landrieu
Lautenberg
Leahy
Levin
Lieberman
Lincoln
Mikulski
Moynihan
Murray
Reed
Reid
Robb
Roberts
Rockefeller
Roth
Sarbanes
Schumer
Sessions
Shelby
Smith (OR)
Snowe
Stevens
Thomas
Thurmond
Torricelli
Voinovich
Warner
Wellstone
Wyden

The CHIEF JUSTICE. The Senate will be in order.

On this vote, the yeas are 30, the nays are 70. Division II of the motion is not agreed to.

The Chair recognizes the Senator from Washington, Mrs. MURRAY.

MURRAY SUBSTITUTE FOR DIVISION III

Mrs. MURRAY. Mr. Chief Justice, I send a substitute for Division III to the desk.

The CHIEF JUSTICE. The clerk will report.

The legislative clerk read as follows:

The Senator from Washington, Mrs. MURRAY, moves that the following shall be substituted for Division III:

I move that the parties be permitted to present before the Senate, for a period of time not to exceed a total of six hours, equally divided, all or portions of the parts of the written transcriptions of the depositions of Monica S. Lewinsky, Vernon E. Jordan, Jr., and Sidney Blumenthal.

The CHIEF JUSTICE. Very well.

The Parliamentarian advises me that there are 2 hours of argument on this motion. Who is the proponent?

Mr. DASCHLE. Mr. Chief Justice, I ask unanimous consent that the time be yielded back.

The CHIEF JUSTICE. Without objection, it is so ordered.

I think the clerk should read Division III, having read the proposed substitute.

The legislative clerk read as follows:

The House further moves that the parties be permitted to present before the Senate, for a period of time not to exceed a total of six hours, equally divided, all or portions of the parts of the videotapes of the oral depositions of Monica S. Lewinsky, Vernon E. Jordan, Jr., and Sidney Blumenthal admitted into evidence, and that the House be entitled to reserve a portion of its presentation time.

The CHIEF JUSTICE. Now the clerk will read the substitute again.

The legislative clerk read as follows:

I move that the parties be permitted to present before the Senate for a period of time not to exceed a total of six hours, equally divided, all or portions of the parts of the written transcriptions of the depositions of Monica S. Lewinsky, Vernon E. Jordan, Jr., and Sidney Blumenthal.

The CHIEF JUSTICE. The yeas and nays are automatic. The question is on the substitute. The clerk will call the roll.

The legislative clerk called the roll.

The yeas and nays resulted—yeas 27, nays 73, as follows:

[Rollcall Vote No. 11]

[Subject: Murray motion to substitute Division III of the House motion]

YEAS—27

Akaka
Biden
Bingaman
Boxer
Campbell
Conrad
Daschle
Dodd
Dorgan
Harkin
Inouye
Johnson
Kennedy
Kerrey
Landrieu
Lautenberg
Levin
Lincoln
Mikulski
Murray
Reed
Reid
Robb
Rockefeller
Sarbanes
Snowe
Torricelli

NAYS—73

Abraham
Allard
Ashcroft
Baucus
Bayh
Bennett
Bond
Breaux
Brownback
Bryan
Bunning
Burns
Byrd
Chafee
Cleland
Cochran
Collins
Coverdell
Craig
Crapo
DeWine
Domenici
Durbin
Edwards
Enzi
Feingold
Feinstein
Fitzgerald
Frist
Gorton
Graham
Gramm
Grams
Grassley
Gregg
Hagel
Hatch
Helms
Hollings
Hutchinson
Hutchison
Inhofe
Jeffords
Kerry
Kohl
Kyl
Leahy
Lieberman
Lott
Lugar
Mack
McCain
McConnell
Moynihan
Murkowski
Nickles
Roberts
Roth
Santorum
Schumer
Sessions
Shelby
Smith (NH)
Smith (OR)
Specter
Stevens
Thomas
Thompson
Thurmond
Voinovich
Warner
Wellstone
Wyden

The CHIEF JUSTICE. On this vote the yeas are 27, the nays are 73, and the motion is not agreed to.

VOTE ON DIVISION III

The CHIEF JUSTICE. The vote is now on the Division III of the motion. The clerk will read Division III.

The assistant legislative clerk read as follows:

Division III. The House further moves that the parties be permitted to present before the Senate, for a period of time not to exceed a total of six hours, equally divided, all or portions of the parts of the videotapes of the oral depositions of Monica S. Lewinsky, Vernon E. Jordan, Jr., and Sidney Blumenthal admitted into evidence, and that the House be entitled to reserve a portion of its presentation time.

The CHIEF JUSTICE. The yeas and nays are automatic. The clerk will call the roll.

The assistant legislative clerk called the roll.

The yeas and nays resulted—yeas 62, nays 38, as follows:

[Rollcall Vote No. 12]

[Subject: Division III of the House managers motion regarding presentation of evidence]

YEAS—62

Abraham	Feingold	McConnell
Allard	Fitzgerald	Moynihan
Ashcroft	Frist	Murkowski
Bennett	Gorton	Nickles
Bond	Gramm	Roberts
Breaux	Grams	Roth
Brownback	Grassley	Santorum
Bryan	Gregg	Sessions
Bunning	Hagel	Shelby
Burns	Hatch	Smith (NH)
Byrd	Helms	Smith (OR)
Campbell	Hollings	Specter
Chafee	Hutchinson	Stevens
Cochran	Hutchison	Thomas
Collins	Inhofe	Thompson
Coverdell	Kyl	Thurmond
Craig	Lieberman	Voinovich
Crapo	Lott	Warner
DeWine	Lugar	Wellstone
Domenici	Mack	Wyden
Enzi	McCain	

NAYS—38

Akaka	Feinstein	Levin
Baucus	Graham	Lincoln
Bayh	Harkin	Mikulski
Biden	Inouye	Murray
Bingaman	Jeffords	Reed
Boxer	Johnson	Reid
Cleland	Kennedy	Robb
Conrad	Kerrey	Rockefeller
Daschle	Kerry	Sarbanes
Dodd	Kohl	Schumer
Dorgan	Landrieu	Snowe
Durbin	Lautenberg	Torricelli
Edwards	Leahy	

The CHIEF JUSTICE. On this vote, the yeas are 62, the nays are 38. Division III of the motion is agreed to.

The CHIEF JUSTICE. The Chair recognizes the minority leader.

MOTION TO PROCEED TO CLOSING ARGUMENTS

Mr. DASCHLE. I send a motion to the desk.

The CHIEF JUSTICE. The clerk will report the motion.

The legislative clerk read as follows:

The Senator from South Dakota [Mr. DASCHLE] moves that the Senate now proceed to closing arguments; that there be 2 hours for the White House Counsel followed by 2 hours for the House Managers; and that at the conclusion of this time the Senate proceed to vote, on each of the articles, without intervening action, motion or debate, except for deliberations, if so decided by the Senate.

The CHIEF JUSTICE. The minority leader.

Mr. DASCHLE. I ask unanimous consent that all time be yielded back.

The CHIEF JUSTICE. In the absence of objection, it is so ordered. The yeas and nays are automatic. The clerk will call the roll.

The legislative clerk called the roll.

The yeas and nays resulted—yeas 44, nays 56, as follows:

[Rollcall Vote No. 13]

[Subject: Daschle motion to proceed to closing arguments]

YEAS—44

Akaka	Edwards	Lieberman
Baucus	Feinstein	Lincoln
Bayh	Graham	Mikulski
Biden	Harkin	Moynihan
Bingaman	Hollings	Murray
Boxer	Inouye	Reed
Breaux	Johnson	Reid
Bryan	Kennedy	Robb
Byrd	Kerrey	Rockefeller
Cleland	Kerry	Sarbanes
Conrad	Kohl	Schumer
Daschle	Landrieu	Torricelli
Dodd	Lautenberg	Wellstone
Dorgan	Leahy	Wyden
Durbin	Levin	

NAYS—56

Abraham	Fitzgerald	McConnell
Allard	Frist	Murkowski
Ashcroft	Gorton	Nickles
Bennett	Gramm	Roberts
Bond	Grams	Roth
Brownback	Grassley	Santorum
Bunning	Gregg	Sessions
Burns	Hagel	Shelby
Campbell	Hatch	Smith (NH)
Chafee	Helms	Smith (OR)
Cochran	Hutchinson	Snowe
Collins	Hutchison	Specter
Coverdell	Inhofe	Stevens
Craig	Jeffords	Thomas
Crapo	Kyl	Thompson
DeWine	Lott	Thurmond
Domenici	Lugar	Voinovich
Enzi	Mack	Warner
Feingold	McCain	

The CHIEF JUSTICE. On this vote the yeas are 44, the nays are 56, and the motion is not agreed to.

The Chair recognizes the majority leader.

Mr. LOTT. Mr. Chief Justice, I believe that was the last of the motions that had been offered.

I am ready to go to the closing script unless there is some other motion pending or to be offered.

Mr. Counsel RUFF. May I ask, Mr. Chief Justice, for indulgence for just a couple minutes to consult with my colleagues?

Mr. LOTT. Mr. Chief Justice, I suggest the absence of a quorum.

The CHIEF JUSTICE. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. LOTT. Mr. Chief Justice, I ask unanimous consent that the order for the quorum call be rescinded.

The CHIEF JUSTICE. Without objection, it is so ordered.

Mr. LOTT. Mr. Chief Justice, I believe that it is in order for White House counsel to offer a motion at this point. If they wish to do so, then I believe they could, then we would vote on that motion.

The CHIEF JUSTICE. The Chair recognizes Mr. White House Counsel Ruff.

Mr. Counsel RUFF. Thank you, Mr. Chief Justice.

MOTION TO PROVIDE WRITTEN NOTICE TO COUNSEL

Mr. Counsel RUFF. Mr. Majority Leader, I want to hand up to the desk a brief motion dealing with the presentation of videotape evidence on Saturday pursuant to the motion that has just been voted on by the Senate. If I may, I hand it up to the clerk.

The CHIEF JUSTICE. The clerk will read the motion.

The legislative clerk read as follows:

Mr. Ruff moves that no later than 2:00 P.M. on Friday, February 5, 1999, the Managers shall provide written notice to counsel for the President indicating the precise page and line designations of any video excerpts from the depositions of Monica Lewinsky, Vernon Jordan or Sidney Blumenthal that they plan to use during their three-hour presentation on Saturday, or during their closing argument.

The CHIEF JUSTICE. There are 2 hours equally divided on the motion.

Mr. Counsel RUFF. Mr. Chief Justice, we won't use but a small percentage of that. I will turn the matter over, if I may, to my colleague, Mr. Kendall.

The CHIEF JUSTICE. The Chair recognizes Mr. Counsel Kendall.

Mr. Counsel KENDALL. Thank you, Mr. Chief Justice.

Ladies and gentlemen of the Senate, House managers, I will be brief. This is simply a procedural motion which I think will make for a fairer hearing and a more efficient use of the Senate's time on Saturday.

Fascinating though these depositions are, I don't think there is any need to inflict them on you repeatedly. What we are asking in this motion is simply a procedure that would be normal in a civil trial, and that is by a fair time tomorrow for the House managers to designate the portions of the three depositions that they intend to use. That will allow us not to repeat those portions, and it will give us some fair chance to organize our responsive presentation.

The burden is on the House managers. I think this is not an extensive set of transcripts. I think it can be easily done. You have all, many of you, watched the depositions this week, read the transcripts. So I think if we can simply have this designation by 2 o'clock tomorrow, it will enable Saturday, perhaps, to be a shorter proceeding.

The CHIEF JUSTICE. Counsel for House managers? The Chair recognizes Mr. Manager ROGAN.

Mr. Manager ROGAN. Mr. Chief Justice, thank you.

I will imitate my colleague at the bar Mr. Kendall's brevity, if not his eloquence.

I simply suggest this is somewhat a unique opportunity that counsel is inviting the House managers to engage in, to give counsel notice of page and line of transcripts for the presentation of evidence that we are going to make. It is our prerogative to put on

our evidence; it is White House counsel's opportunity to put on their evidence. Asking us to choreograph that for them and with them is something that I am unfamiliar with, except for one time.

I remember during my days as a judge in California that a similar request was made for me, and a law clerk pointed out to me language from one of the late great justices of the California Supreme Court, Otto Kaus. Apparently, a similar request was made to Justice Kaus to do the same thing in a case, and Justice Kaus looked at the lawyer making the request and he said, "I believe the appropriate legal response to your request is that it is none of your damn business what the other side is going to put on."

With that, Mr. Chief Justice, we will yield back the balance of our time.

The CHIEF JUSTICE. Mr. Kendall.

Mr. Counsel KENDALL. That philosophy might want to be emulated at some point by the drafters of the Federal Civil Rules, but it is not. In every Federal civil trial, this procedure is followed, the designation, the identifying, and designating of deposition excerpts.

Again, I think it will make for a fairer and more efficient proceeding. I don't think trial by surprise has a place here.

The CHIEF JUSTICE. The vote is on the motion.

The clerk will read the motion.

The legislative clerk read as follows:

Mr. Ruff moves that no later than 2:00 P.M. on Friday, February 5, 1999, the Managers shall provide written notice to counsel for the President indicating the precise page and line designations of any video excerpts from the depositions of Monica Lewinsky, Vernon Jordan or Sidney Blumenthal that they plan to use during their three-hour presentation on Saturday, or during their closing argument.

Mr. BYRD. Mr. Chief Justice, may we have order.

The CHIEF JUSTICE. I fully agree with the Senator.

Mr. BYRD. Would the clerk read that again.

The CHIEF JUSTICE. Let the Senate remain in order and let the clerk read the motion again.

The legislative clerk read as follows:

Mr. Ruff moves that no later than 2:00 P.M. on Friday, February 5, 1999, the Managers shall provide written notice to counsel for the President indicating the precise page and line designations of any video excerpts from the depositions of Monica Lewinsky, Vernon Jordan or Sidney Blumenthal that they plan to use during their three-hour presentation on Saturday, or during their closing argument.

The CHIEF JUSTICE. The yeas and nays are automatic. The clerk will call the roll.

The assistant legislative clerk called the roll.

[Disturbance in the Visitors' Galleries.]

The CHIEF JUSTICE. The Sergeant at Arms will restore order to the gallery.

The assistant legislative clerk continued with the call of the roll.

The yeas and nays resulted—yeas 46, nays 54, as follows:

[Rollcall Vote No. 14]

[Subject: White House Counsels' motion]

YEAS—46

Akaka	Feingold	Lieberman
Baucus	Feinstein	Lincoln
Bayh	Graham	Mikulski
Biden	Harkin	Moynihan
Bingaman	Hollings	Murray
Boxer	Inouye	Reed
Breaux	Jeffords	Reid
Bryan	Johnson	Robb
Byrd	Kennedy	Rockefeller
Cleland	Kerrey	Sarbanes
Conrad	Kerry	Schumer
Daschle	Kohl	Torricelli
Dodd	Landrieu	Wellstone
Dorgan	Lautenberg	Wyden
Durbin	Leahy	
Edwards	Levin	

NAYS—54

Abraham	Fitzgerald	McConnell
Allard	Frist	Murkowski
Ashcroft	Gorton	Nickles
Bennett	Gramm	Roberts
Bond	Grams	Roth
Brownback	Grassley	Santorum
Bunning	Gregg	Sessions
Burns	Hagel	Shelby
Campbell	Hatch	Smith (NH)
Chafee	Helms	Smith (OR)
Cochran	Hutchinson	Snowe
Collins	Hutchison	Specter
Coverdell	Inhofe	Stevens
Craig	Kyl	Thomas
Crapo	Lott	Thompson
DeWine	Lugar	Thurmond
Domenici	Mack	Voinovich
Enzi	McCain	Warner

The CHIEF JUSTICE. On this vote, the yeas are 46, the nays are 54. The motion is rejected.

ORDERS FOR SATURDAY, FEBRUARY 6 AND MONDAY, FEBRUARY 8, 1999

Mr. LOTT. Mr. Chief Justice, I believe that completes all the motions. Therefore, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 10 a.m. on Saturday, February 6, and at 10 a.m. on Saturday, immediately following the prayer, the Senate will resume consideration of the articles of impeachment. I further ask consent that on Saturday there be 6 hours equally divided between the House managers and White House counsel for presentations. I further ask that following those presentations on Saturday, the Senate then adjourn until 1 p.m. on Monday, February 8. I finally ask consent that on Monday, immediately following the prayer, the Senate resume consideration of the articles of impeachment, and there then be 6 hours equally divided between the managers and White House counsel for final arguments.

Mr. LEAHY. Mr. Chief Justice, reserving the right to object, and I shall not, I ask the distinguished leader this. We have had exhibits handed out today to be printed in the CONGRESSIONAL RECORD, referring to depositions which, I understand under rule XXIX, are still confidential. Are those to be printed in the RECORD?

Mr. LOTT. I will ask consent that the transcripts of the depositions be printed in the RECORD of today's date.

Mr. LEAHY. The exhibits were handed out today in debate. Were they handed out under rule XXIX?

Mr. LOTT. I believe we got approval that they be used in the oral presentations at the beginning of the session today.

Mr. LEAHY. I withdraw any objection.

Mr. CHIEF JUSTICE. Objection has been heard.

Mr. LEAHY. Mr. Chief Justice, I withdrew any objection.

Mr. KERRY addressed the Chair.

The CHIEF JUSTICE. The Senator from Massachusetts, Mr. KERRY, is recognized.

Mr. KERRY. Mr. Chief Justice, reserving the right to object. I ask the majority leader, is there an assumption that if White House counsel were to want sufficient time on Saturday in order to be able to present video testimony countering whatever surprise video—and there may or may not be a surprise—would they have time to be able to provide that on Saturday—not to carry over, but merely if they choose to, to do that on Saturday?

Mr. LOTT. I am not sure I understand the question, except that we will come in at 10, and we will have 6 hours equally divided. I presume that the House would make a presentation first and then the White House and then close. There would be time during that 6-hour period for the White House to use it as they see fit. Are you asking that there would be some sort of break so they would be able to consider that?

Mr. KERRY. Clearly, the purpose of the trial and the purpose of this effort is to have a fair presentation of evidence. The Senate now having denied notice to White House counsel of what areas may be the subject of video, it might be that the voice of the witnesses themselves is the best response to whatever it is that the House were to present. If they were to decide——

Mr. BROWNBACK. Mr. Chief Justice, I call for the regular order.

The CHIEF JUSTICE. The regular order has been called for. There is a unanimous consent request pending. Is there objection?

Mr. LOTT. Mr. Chief Justice, briefly, if I could say on behalf of my unanimous consent, and in brief response to the question, we have all worked hard and bent over backward trying to be fair. I am sure if there is something that would be needed on Saturday, it would be carefully considered by both sides.

Mr. KERRY. Mr. Chief Justice, I suggest the absence of a quorum.

Mr. GRAMM. A quorum is present.

The CHIEF JUSTICE. The majority leader has the floor.

Mr. LOTT. Mr. Chief Justice, I believe it would be appropriate to go ahead and get this unanimous consent agreement. We will continue to work with both sides to try to make sure there is a fair way to proceed on Saturday. We will have the remainder of today

and tomorrow to work on that. So I would like to renew my unanimous consent request.

The CHIEF JUSTICE. Is there objection?

Mr. BOND. Mr. Chief Justice, reserving the right to object. May I inquire of the majority leader if that Saturday time schedule gives both parties adequate time to prepare for the presentation of the evidence? Have both sides agreed that they will be prepared?

Mr. LOTT. Mr. Chief Justice, as best I can respond to that, I just say that hopefully both sides have had more than adequate time allocated on Saturday. One of the reasons we are doing it this way—Saturday instead of tomorrow—is so both sides will have an opportunity to review everything and hopefully communicate with each other. We will do that Friday during the day so that an orderly presentation can be made by both sides on Saturday. I believe we are seeing a problem here where there may not be one.

But if one develops certainly we would take it into consideration.

Mr. Chief Justice, I renew my request.

The CHIEF JUSTICE. Is there objection? In the absence of objection, it is so ordered.

Mr. LOTT. Mr. Chief Justice, I ask unanimous consent that those parts of the transcripts of the depositions admitted into evidence be printed in the CONGRESSIONAL RECORD of today's date.

I further ask consent that the deposition transcripts of Monica Lewinsky, Vernon Jordan, and Sidney Blumenthal, and the videotapes thereof, be immediately released to the managers on the part of the House and the counsel to the President for the purpose of preparing their presentations, provided, however, that such copies shall remain at all times under the supervision of the Sergeant at Arms to ensure compliance with the confidentiality provisions of S. Res. 30.

The CHIEF JUSTICE. In the absence of objection, it is so ordered.

[The material follows:]

IN THE SENATE OF THE UNITED STATES SITTING FOR THE TRIAL OF THE IMPEACHMENT OF WILLIAM JEFFERSON CLINTON, PRESIDENT OF THE UNITED STATES

EXCERPTS OF VIDEO DEPOSITION OF MONICA S. LEWINSKY

(Monday, February 1, 1999, Washington, D.C.)

SENATOR DeWINE: If not, I will now swear the witness.

Ms. Lewinsky, will you raise your right hand, please?

Whereupon, MONICA S. LEWINSKY was called as a witness and, after having been first duly sworn by Senator DeWine, was examined and testified as follows:

SENATOR DeWINE: The House Managers may now begin your questioning.

MR. BRYANT: Thank you, Senator.

Good morning to all present.

EXAMINATION BY HOUSE MANAGERS

BY MR. BRYANT:

Q. Ms. Lewinsky, welcome back to Washington, and wanted to just gather a few of our friends here to have this deposition now. We do have quite a number of people present, but we—in spite of the numbers, we do want you to feel as comfortable as possible because I think we—everyone present today has an interest in getting to the truth of this matter, and so as best as you can, we would appreciate your answers in a—in a truthful and a fashion that you can recall. I know it's been a long time since some of these events have occurred.

But for the record, would you state your name once again, your full name?

A. Yes. Monica Samille Lewinsky.

Q. And you're a—are you a resident of California?

A. I'm—I'm not sure exactly where I'm a resident now, but I—that's where I'm living right now.

Q. Okay. You—did you grow up there in California?

A. Yes.

Q. I'm not going to go into all that, but I thought just a little bit of background here.

You went to college where?

A. Lewis and Clark, in Portland, Oregon.

Q. And you majored in—majored in?

A. Psychology.

Q. Tell me about your work history, briefly, from the time you left college until, let's say, you started as an intern at the White House.

A. Uh, I wasn't working from the time I—

Q. Okay. Did you—

A. I graduated college in May of '95.

Q. Did you work part time there in—in Oregon with a—with a District Attorney—

A. Uh—

Q. —in his office somewhere?

A. During—I had an internship or a practicum when I was in school. I had two practicums, and one was at the public defender's office and the other was at the Southeast Mental Health Network.

Q. And those were in Portland?

A. Yes.

Q. Okay. What—you received a bachelor of science in psychology?

A. Correct.

Q. Okay. As a part of your duties at the Southeast Health Network, what did you—what did you do in terms of working? Did you have direct contact with people there, patients?

A. Yes, I did. Um, they referred to them as clients there and I worked in what was called the Phoenix Club, which was a socialization area for the clients to—really to just hang out and, um, sort of work on their social skills. So I—

Q. Okay. After your work there, you obviously had occasion to come to work at the White House. How did—how did you come to decide you wanted to come to Washington, and in particular, work at the White House?

A. There were a few different factors. My mom's side of the family had moved to Washington during my senior year of college and I wanted—I wasn't ready to go to graduate school yet. So I wanted to get out of Portland, and a friend of our family's had a grandson who had had an internship at the White House and had thought it might be something I'd enjoy doing.

Q. Had you ever worked around—in politics and campaigns or been very active?

A. No.

Q. You had to go through the normal application process of submitting a written application, references, and so forth to—to the White House?

A. Yes.

Q. Did you do that while you were still in Oregon, or were you already in D.C.?

A. No. The application process was while I was a senior in college in Oregon.

Q. Had you ever been to Washington before?

A. Yes.

Q. Obviously, you were accepted, and you started work when?

A. July 10th, 1995.

Q. Where—where were you assigned?

A. The Chief—

Q. Physically, where were you located?

A. Oh, physically?

Q. Yes.

A. Room 93 of the Old Executive Office Building.

Q. Were you designated in any particular manner in terms of—were all interns the same, I guess, would be my question?

A. Yes and no. We were all interns, but there were a select group of interns who had blue passes who worked in the White House proper, and most of us worked in the Old Executive Office Building with a pink intern pass.

Q. Now, can you explain to me the significance of a pink pass versus a blue pass?

A. Sure.

Q. Okay. Is it—is it access?

A. Yes.

Q. To what?

A. A blue pass gives you access to anywhere in the White House and a pink intern pass gives you access to the Old Executive Office Building.

Q. Did interns have blue passes?

A. Yes, some.

Q. Some did, and some had pink passes?

A. Correct.

Q. And you had the pink?

A. Correct.

Q. How long was your internship?

A. It was from July 'til the end of August, and then I stayed on for a little while until the 2nd.

Q. Are most interns for the summertime—you do part of the summer or the entire summer?

A. I believe there are interns all year-round at the White House.

Q. Now, you as an intern, you are unpaid.

A. Correct.

Q. And tell—tell me how you came to, uh, through your decisionmaking process, to seek a paid position and stay in Washington.

A. Uh, there were several factors. One is I came to enjoy being at the White House, and I found it to be interesting. I was studying to take the GREs, the entrance exam for graduate school, and needed to get a job. So I—since I had enjoyed my internship, my supervisor at the time, Tracy Beckett, helped me try and secure a position.

Q. Now, you mentioned the pink pass that you had. So you were able to—I don't want to presume—you were able to get into the White House on occasion even with a pink pass?

A. The—do you mean the White House proper, or—

Q. Yes, the White House—

A. —the complex?

Q. Yes. Let me be clear. When I—I tend to say "White House"—I mean the actual building itself. And I know perhaps you think of the whole complex in terms of the whole—

A. I'm sorry. Just to be clear—

Q. Yes.

A. —do you mean the West Wing and the residence and—

Q. Right.

A. —the East Wing when you say the White House?

Q. Right. The White House where the President lives, and works, I guess, right.

A. I'm sorry. Can you repeat the question?

Yes, yes. I mean that White House. As an intern, you had a pink pass that did allow you to have access to that White House where the President was on occasion?

A. No.

Q. Did not. Did you have—did you ever get in there as an intern?

A. Yes.

Q. And under—under what circumstances?

A. It—

Q. Did you have to be accompanied by someone, or—

A. Exactly; someone with a blue pass.

Q. So how did you—once you decided you wanted to stay in Washington and find a paying job, you sought out some help from friends there, people you knew, contacts, and you were—you did—you were successful?

A. Correct.

Q. And you were hired where—where in the White House?

A. In Legislative Affairs.

Q. Now, again, to educate me on this, in that group, in that section, department, you would have worked where, physically?

A. Physically, in the East Wing.

Q. Okay, and as an intern before, you worked in the Old Executive Office Building?

A. Correct.

Q. But you moved about and occasionally would go into the White House, if escorted?

A. Correct.

Q. It takes a while, but I'll get there with you; I'll catch up.

When did you actually—what was your first day on the job with the Legislative Affairs, uh, group?

A. Um, first day on the job was sometime after the furlough. I was hired right before the furlough, but the paperwork hadn't gone through, so first day on the job was some point after the furlough. I don't remember the exact date.

Q. So you remained, uh, on as an intern during the furlough—

A. Correct.

Q. —the Government shutdown period.

A. Correct.

Q. And that was in November of 1995, some date during that?

A. Yes.

Q. Okay. Um, tell me how you, um, began—I guess the—the—we're going to talk about a relationship with the President. Uh, when you first, uh, I guess, saw him, I think there was some indication that you didn't speak to him maybe the first few times you saw him, but you had some eye contact or sort of smiles or—

A. I—I believe I've testified to that in the grand jury pretty extensively.

Q. Uh-huh.

A. Is—is there something more specific?

Q. Well, again, I'm wanting to know times, you know, how soon that occurred and sort of what happened, you know, if you can—you know, there are going to be occasions where you—obviously, you testified extensively in the grand jury, so you're going to obviously repeat things today. We're doing the deposition for the Senators to view, we believe, so it's—

MR. CACHERIS: May I note an objection? The Senators have the complete record, as you know, Mr. Bryant, and she is standing on her testimony that she has given on the occasions that Mr. Stein alluded to at the introduction of this deposition.

MR. BRYANT: Well, I appreciate that, but, uh, if this is going to be the case, we don't even need the deposition, because we're limited to the record and everything is in the record. So I think, uh, to be fair, we're—we're obviously going to have to talk about, uh, some things for 8 hours here, or else we can go home.

THE WITNESS: Sounds good to me.

[Laughter.]

MR. BRYANT: I think we probably all would like to do that.

SENATOR DeWINE: Counsel, are you objecting to the question?

MR. CACHERIS: Yes. I'm objecting to him asking specific questions that are already in the record that—he has said they are limited to the record, and so we accept his, his designation. We're limited to the record.

SENATOR DeWINE: We're going to go off the record for just a moment.

THE VIDEOGRAPHER: We're going off the record at 9:37 a.m.

[Recess.]

THE VIDEOGRAPHER: We are going back on the record at 9:45 a.m.

SENATOR DeWINE: We are now back on the record.

The objection is noted, but it's overruled, and the witness is instructed to answer the question.

Senator Leahy?

SENATOR LEAHY: And I had noted during the break that obviously, the witness has 48 hours to correct her deposition, and would also note that when somebody has testified to some of these things 20 or more times that it is not unusual to have some nuances different, and that could also be reflected in time to correct her testimony.

And I had also noted when we were off the record Mr. Manager Bryant's comment on January 26th, page S992 in the CONGRESSIONAL RECORD, in which he said: "If our motion is granted, I want to make this very, very clear. At no point will we ask

any questions of Monica Lewinsky about her explicit sexual relationship with the President, either in deposition or, if we are permitted on the floor of the Senate, they will not be asked."

And I should add also, to be fair to Mr. Bryant, another sentence in that: "That, of course, assumes that White House Counsel does not enter into that discussion, and we doubt that they would." Period, close quote.

SENATOR DeWINE: Let me just add something that I stated to counsel and to Ms. Lewinsky off the record, and I think I will briefly repeat it, and that is that counsel is entitled to an answer to the question, but Ms. Lewinsky certainly can reference previous testimony if she wishes to do that. But counsel is entitled to a new explanation of—of what occurred.

Counsel, you may—why don't you re-ask the question, and we will proceed.

MR. BRYANT: May I, before I do that, ask a procedural question in terms of timekeeping?

SENATOR DeWINE: The time is not counted—any of the time that you have—once there is an objection, none of the time is counted until we rule on the objection and until you then have the opportunity to ask the question again. So the time will start now.

MR. BRYANT: Very good.

BY MR. BRYANT:

Q. Ms. Lewinsky, again, let me—I know this is difficult, but let me apologize that, uh, that it is going to be necessary that I ask you these questions because we're limited to the record and if we—we can't ask you any new questions outside that record, so I have to talk about what's in the record. And I realize you've answered all these questions several times before, but it's, uh—I'm sincere that we really wouldn't need to take your deposition if we couldn't ask you those kinds of questions. So it's not motivated to cause you discomfort or to make you sit here in Washington when you'd rather be in California. We'll try to get through this as quickly as we can.

But we were talking about when you were first assigned there at the White House and those initial contacts, and I mean, again, when you were—you would see the President. I think you've mentioned you would—there was some mild flirting going on; you would smile or you would make eye contact. It was something of this nature?

A. Yes.

Q. And the first—was the first time you actually spoke to the President or he spoke to you, other than perhaps a hello in the hallway, was that on November the 15th, 1995?

A. Yes.

Q. And that was—that was the day, uh, of the first so-called salacious encounter, the same day?

A. Yes.

Q. Now, when the President gave a statement testifying before the grand jury, he—he described that relationship as what I considered sort of an evolving one. He says: "I regret that what began as a friendship came to include this conduct." And he goes on to take full responsibility for his actions. But that almost sounds as if this was an evolving—something from a friendship evolving over time to a sexual relationship. That was not the case, was it?

A. I—I can't really comment on how he perceived it. My perception was different.

Q. Okay—

A. But I—I—I mean, I don't feel comfortable saying that he didn't, that he didn't see it that way, or that's wrong; that's how he saw it. I—

Q. But you saw it a different way?

A. Yes.

Q. Now, on November the 15th, had you already accepted this job with Legislative Affairs?

A. Yes.

Q. And, uh, was—that was during the shutdown, so you had no job to go to because the Government was shut down.

A. No. I accepted it on the Friday before the furlough.

Q. And that—

A. But the paperwork hadn't gone through.

Q. Okay. Did, uh—when you first met with the President on November the 15th, did he say anything to you that would indicate that he knew you were an intern?

A. No.

Q. Did he make a comment about your, your pink security badge?

A. Can I ask my counsel a question real quickly, please?

[Witness conferring with counsel.]

MR. CACHERIS: Okay, Mr Bryant.

THE WITNESS: Sorry. It was—that occurred in the second encounter of that evening.

BY MR. BRYANT:

Q. Okay. On November—

A. So, not the first encounter.

Q. On November the 15th, 1995?

A. Correct.

Q. What—do you recall what he said or what he did in regard to the intern pass?

A. He tugged on my pass and said: "This is going to be a problem."

Q. And what did, uh—did he say anything else about what he meant by "problem"?

A. No.

Q. Tell me about your job at Legislative Affairs. Did that involve going into the White House itself?

A. Yes. My job was in the White House.

Q. You were in one wing, but did that involve going—did it give you access—

A. Yes.

Q. —pretty well throughout the White House?

A. Yes.

Q. What did you do primarily?

A. I worked under Jocelyn Jolly, who supervised the letters that came from the Hill; so the opening of those letters and reading them and vetting them and preparing responses for the President's signature—responding.

Q. Now, you've indicated through counsel at the beginning that you are willing to affirm, otherwise adopt, your sworn testimony of August the 6th and August the 20th, I think, which would be grand jury, and the deposition of August the 26th, 1998.

A. Correct.

Q. So you're saying that that information is accurate, and it is truthful?

A. Yes.

Q. Well, thank you. That—that will save us a little bit of time, but certainly we will ask you some of that information also.

At some point, you were transferred to the Pentagon, to the Department of Defense. When did that occur?

A. I found out I was being transferred on April 5th, 1996.

Q. Did you want to go—

A. No.

Q. —to the Department of Defense? Did you have a discussion with the President about this?

A. Yes.

Q. What was your reaction to being transferred?

A. I started to cry.

Q. Did you talk to anyone else at the White House other than the President about the transfer at that time?

A. Yes.

Q. And who—who was that?

A. I spoke with several people. I—I can't—I know I—I spoke with, uh, Jocelyn about it. I spoke with people with whom I was friendly at the White House. I spoke to Betty, Nancy Hernreich, several people.

Q. Did you—did you find out why you were being transferred?

A. Uh, I was told why I was being transferred by Mr. Keating on Friday, the 5th of April.

Q. And that was why?

A. Uh, he said that the—the Office of Administration, I think it was, was not pleased with the way the correspondence was being handled, and they were, quote-unquote, "blowing up" the Correspondence Office, and that I was being transferred and it had nothing to do with my work.

Q. Did you have any understanding that it might have been other reasons that you were being moved?

A. Not at that point.

Q. Did the—what did the President say about your transfer at that point?

A. He thought it had something to do with our relationship.

Q. What else did he say about—about your transfer, if anything? Did he give you any assurances that you might be back, or—

A. Yes.

Q. Back after what time period?

A. He promised me he'd bring me back after the election.

Q. So this was, again, in early 19—April of 1996, and he was up for reelection—

A. Yes.

Q. —in November of 1996.

A. Yes.

Q. Did you attach any significance to being transferred away before the election and then him assuring you he would bring you back after the election? Did you attach any significance to the election and your having to leave?

A. Emotional significance, yes.

Q. Your emotion? I'm—I'm not sure I follow you. You were—

A. Well, yes, I attached significance to it.

Q. And that was emotional—

A. But that was emotional.

Q. But the reason you both felt—again, I'm not trying to put words in your mouth, but you both felt you were leaving until after the election was because of your relationship and perhaps people finding out?

A. No. I—I—first, I can only speak for myself. I mean, I, uh, my understanding initially was that it was, um, for work-related issues, but not my work, and I came to understand later that it was having to do with my relationship with the President.

Q. Okay. Did, uh, you have a conversation—and it may be the same one with the President on April the 12th—which determined that Ms. Lieberman maybe spearheaded your transfer because you were paying too much attention—you were all—you were both paying too much attention to each other and she was worried that it was close to election time? And I think you've testified to that, haven't you?

A. Yes.

Q. Okay, good. You started, uh, with the Department of Defense at the Pentagon in mid-April, April the 17th, 1996?

A. Yes.

Q. What did you do there?

A. I was the confidential assistant to Mr. Bacon, who is the Assistant Secretary of Defense for Public Affairs.

Q. Did, uh—after the 1996 election, did you still want to go back to the White House?

A. Yes.

Q. You had not fallen in love with the job at the Pentagon that much?

A. No.

Q. Was that, in fact, a frustrating period of time?

A. Yes. No offense to Mr. Bacon, of course.

Q. I understand; I'm sure he would take none.

I would like—I don't think it's been mentioned, but you helped in preparing a chart which we have listed as one of our exhibits, ML Number 2, which I assume might have a different number for now, but it's a chart of contacts—

A. Right.

Q. —that you had with the President. And do you have a copy of that chart? It—

[Witness conferring with counsel.]

MR. BRYANT: In the—yes, in the record, it's at page 1251.

MR. BURTON: May we have an extra copy for counsel, please?

BY MR. BRYANT:

Q. Have you had occasion to review this document?

A. Yes.

Q. And very—very simply, I would like for you to, uh, if you can, to affirm that document as an accurate representation and a truthful representation of all the contacts that you had with the President from approximately August 9th, 1995 until

January of 1998. It includes in-person contacts, telephone calls, gifts and notes exchanged, I think are the categories.

A. Yes. I believe there might have been one or two changes that were made and noted in the grand jury or my deposition, and I adopt those as well.

MR. BRYANT: Okay, good.

I am not going to at this point make her—the information she adopts and affirms exhibits to this deposition. I don't want to clutter it any more unless someone wants to make this an exhibit in terms of your deposition testimony, your grand jury testimony, and now the charts that you have affirmed, so I just want you to specifically affirm it but not make it an exhibit, because it's already a part of the record.

MR. CACHERIS: We defer to the White House.

MS. SELIGMAN: I just wanted to make clear on the record, then, what the app. or sub-cite is of anything we're adopting so that we all know what particular pages it is.

MR. BRYANT: Okay. And that, again, was, I think, page 1251 of—right, of the record.

SENATOR LEAHY: I don't—I don't understand.

MS. MILLS: Can you cite the ending page?

SENATOR DeWINE: Counsel, is that where this appears?

MR. BRYANT: It appears in the record, uh—

SENATOR DeWINE: You need to designate also if you're talking about the Senate record or—I think at this point we'll go off the record.

THE VIDEOGRAPHER: We're going off the record at 10:01 a.m.

[Recess.]

THE VIDEOGRAPHER: We are going back on the record at 10:11 a.m.

SENATOR DeWINE: Let me—we're now back on the record.

Let me advise counsel, the Managers, that they have used 25 minutes so far.

You may resume questioning, and if you could begin by identifying the exhibit for the record, please.

MR. BRYANT: Tom, let me also for clarification purposes—Tom, on the referral to the Senate record, you're saying that the appendices are numbered 3, but the numbers are the same. The page numbers are the same.

MR. GRIFFITH: Yes.

MR. BRYANT: And the supplemental materials are your Volume IV, but, again, the pages are the same.

MR. GRIFFITH: That's our understanding.

MR. BRYANT: Okay. For the record, then, using the Senate volumes, if this is an appendices, Volume III, and the chart that we just alluded to before the break is—appears at pages 116 through 126 of the Senate record, Volume III.

BY MR. BRYANT:

Q. Ms. Lewinsky, did you tell a number of people in varying details about your relationship with the President?

A. Yes.

Q. You tell us who did you tell?

A. Catherine Allday Davis, Neysa Deman Erbland, Natalie Ungvari, Ashley Raines, Linda Tripp, Dr. Kathy Estep, Dr. Irene Kassorla, Andy Bleiler, my mom, my aunt. Who else has been subpoenaed?

Q. Okay. Let me suggest Dale—did you mention Dale Young?

A. Dale Young. I'm sorry.

Q. Thank you.

Now, in the floor presentation, Mr. Craig, who was one of—is one of the counsel for the President, adopted an argument that had been raised in some of the previous hearings, uh, and he adopted this argument in the Senate that—that you have—have or had, I think, both past and present, the incentive to not tell the truth about how the President—this relationship with him because you wanted to avoid—and again, I use the quote from Mr. Craig's argument—the demeaning nature of providing wholly un-reciprocated sex.

Did, uh—did you lie before the grand jury and to your friends about the nature of that relationship with the President—

A. No.

Q. —so as to avoid what Mr. Craig says? Okay, and I'll break it down.

SENATOR DeWINE: Counsel, do you want to just—just rephrase the question?

MR. BRYANT: Okay. We'll break it down into two questions.

BY MR. BRYANT:

Q. Did you not tell the truth before the grand jury as to how the President touched you because of what Mr. Craig alleges as the demeaning nature of the wholly un-reciprocated sex?

MR. CACHERIS: Well, that—may I register an objection, gentlemen? This witness is not here to comment on what some lawyer said on the floor of the Senate. He can ask her direct questions. She will answer them, but what Mr. Craig said or didn't say would have happened after her grand jury testimony. So it's totally inappropriate that he's—

SENATOR DeWINE: Mr. Bryant, why don't you—

MR. CACHERIS: —marrying those two concepts. We object.

SENATOR DeWINE: Mr. Bryant, why don't you just rephrase the question?

MR. BRYANT: Well, we—we have had presented on behalf of the President a defense, an incentive, a reason why she would not tell the truth, and I think she should have the opportunity to respond to that—that allegation.

MR. CACHERIS: We—we don't, uh—

SENATOR LEAHY: Ask her a direct question.

MR. CACHERIS: We welcome you asking her if her testimony was truthful, and she will tell you that it is truthful. We don't have any problem with that. We don't have any brief with what the White House did or didn't do through their counsel. That's their business. We don't represent the White House.

MS. SELIGMAN: So, for the record, I'd like to object to the characterization of what Mr. Craig says, which obviously speaks for itself, but I certainly don't want my silence to be construed as accepting the Manager's characterization of it.

SENATOR DeWINE: Mr. Bryant, why don't you—why don't you ask the question?

MR. BRYANT: Okay.

SENATOR DeWINE: Go ahead and ask your question.

BY MR. BRYANT:

Q. In regard to your testimony at the grand jury about your—your relationship and the physical contact that you have said occurred in some of these, uh, visits with the President, it has been characterized in a way that would give you an excuse not to tell the truth. Did you tell the truth in the grand jury about what actually happened and how the President touched—the President touched you?

A. Yes.

Q. And did you likewise tell the truth to your friends in connection with the same matters?

A. Yes.

Q. Did your relationship with the President involve giving gifts, exchanging gifts?

A. Yes.

Q. And you mentioned earlier that in reference to this chart that it was, uh, subject to certain corrections you've made in later testimony. It was an accurate representation or an accurate compilation of the gifts that, uh, you gave the President and the President gave you. Is that correct?

A. Yes.

Q. Approximately how many gifts did you give the President?

A. I believe I've testified to that number. I don't recall right now.

Q. About 30? Would that be—

A. If that's what I testified to, then I accept that.

Q. That's the number I have, and do you recall how many gifts approximately the President gave you?

A. It would be the same situation.

Q. Okay, and you've previously testified in your grand jury that he gave you about 18 gifts.

A. I accept that.

Q. Okay, good. What types of gifts did you give the President?

A. They varied. I think they're listed on this chart, and I've testified to them.

Q. Okay, and—

MR. CACHERIS: Do you want her to read the list that's on this chart?

MR. BRYANT: No. I was just, again, looking for just a—I think maybe a little broader category, but that's—that's okay. That's an acceptable answer there.

BY MR. BRYANT:

Q. After leaving the White House and going to the Pentagon, did you continue to visit the President?

A. Yes.

Q. How would you—how would you be transported from the Pentagon over to the White House? How did you get there?

A. I drove or took a taxi.

Q. Do you have your own car?

A. No.

Q. Whose—whose car would you drive?

A. Either my mom's or my brother's.

Q. So you did have access to a vehicle?

A. Correct.

Q. Okay. How were these meetings arranged when you would want to go from the Pentagon to the White House? How did—how did these—how were they set up? Did you get an appointment?

[The witness conferring with counsel.]

SENATOR DeWINE: Counsel—if you have to ask counsel, you can stop and ask us—

THE WITNESS: Okay.

SENATOR DeWINE: —to do that.

BY MR. BRYANT:

Q. How were these meetings arranged?

A. Through Ms. Currie.

Q. Would—would you call her and set the meeting up, or would she call you on behalf of the President and set the meeting up?

A. It varied.

Q. Both—both situations occurred?

A. Correct.

Q. Now, Ms. Currie is the President's—that's Betty Currie, we're talking about, the President's secretary?

A. Yes.

Q. Why was this done? Why was that procedure used?

A. It was my understanding that Ms. Currie took care of the President's guests who were coming to see him, making those arrangements.

Q. Was, uh—was this—were these visits done sort of off the record, so to speak, so it wouldn't necessarily be a record?

A. I believe so.

Q. In other words, you wouldn't be shown on Betty Currie's calendar or schedule book for the President?

A. I don't know.

Q. Did—who suggested this type of arrangement for setting up meetings?

A. I believe the President did.

Q. During this time that you were at the Department of Defense at the Pentagon, uh, how—how was it working out about you being transferred back to the White House? How was the job situation coming?

A. Well, I waited until after the election and then spoke with the President about it on several occasions.

Q. And what would he say in response?

A. Various things; "I'm working on it," usually.

Q. In July, uh, particularly around the—the 3rd and 4th of July, there—there—you wrote the President a letter, I think.

A. Which year?

Q. July of '90—it would have been '97 that you wrote the President a letter expressing some frustrations about the job situation in terms of—is that, uh—can you tell us about that?

A. Yes. I had had a—well, I guess I was—I know I've testified about this, I mean, in the grand jury, but I was feeling at that point that I was getting the runaround on being brought back to the White House. So I sent a letter to the President that was probably the harshest I had sent.

Q. Did you get a response?

A. Sort of.

Q. Would you explain?

A. Um, Betty called me and told me to come to the White House the next morning, on July 4th, at 9:00 a.m.

Q. And what happened when you—I assume you went to the White House on July the 4th. What happened?

A. I know I—I—do you have a specific question? I know I testified, I mean, extensively about this whole day, that whole—

Q. Well, in regards to—let's start with the job.

A. Well, I started crying. We were in the back office and, um—and when the subject matter came up, the President was upset with me and then I began to cry. So—

Q. Did he encourage you about you coming back? Did he make a promise or commitment to you that he would make sure you came back to work at the White House?

A. I don't know that he reaffirmed his promise or commitment. I remember leaving that day thinking that, as usual, he was going to work on it and had a renewed sense of hope.

Q. Did he comment on your letter, the tone of your letter?

A. Yes.

Q. What did he say?

A. He was upset with me and told me it was illegal to threaten the President of the United States.

Q. Did you intend the letter to be interpreted that way?

A. No.

Q. Did you explain why you wrote the letter to him about reminding him that you were a good girl and you left the White House? Did you have that type of conversation?

A. Yes. That's what made me start to cry.

Q. Did you, uh—did you ever explain to him that you didn't intend to threaten him?

A. I believe so.

Q. What was the intent of the letter?

A. First, I felt the letter was going to him as a man and not as President of the United States. Um, second, I think I could see how he could interpret it as a threat, but my intention was to sort of remind him that I had been waiting patiently and what I considered was being a good girl, about having been transferred.

Q. And the threat we're talking about here would not have been interpreted as a threat to do physical injury or bodily injury to him. It was to expose your relationship to the—to your parents—

A. Correct.

Q. —explain to them why you were not going back to the White House—

A. Correct.

Q. —after the election?

And certainly the President did not encourage you to expose that relationship, did he?

A. I don't believe he made any comment about it at that point.

Q. His only comment about the so-called threat was that it's a—-it's—you can't do that, it's against the law to threaten the President?

A. Exactly.

Q. That meeting turned into—I guess you've testified that that meeting did turn into a more positive meeting toward the end. It was not all emotional and accusations being made?

A. Correct.

Q. At some point, uh—well, let me—let me back up and ask this. There was a subsequent meeting on July the 14th, and I believe the President had been out of town and this was the follow-up meeting to the July 4th meeting where you had originally discussed the possibility of a newspaper reporter or a magazine writer, I believe, writing a story about Ms. Willey?

A. Correct.

Q. And you, uh—did you have any instructions from the President, from either of these meetings, about doing something for the President, specifically about having Ms. Tripp call White House counsel—

A. I don't know—

Q. —Mr. Lindsey?

A. —that I'd call them instructions.

Q. Okay. What did he tell you? I don't want to mischaracterize.

A. He asked me if I would try to have Ms. Tripp contact Mr. Lindsey.

Q. Okay, and if you were to be successful in doing that, what were you supposed to do? Were you supposed to contact Ms. Currie, his secretary?

A. Yes.

Q. And what were you supposed to tell her?

A. In an innocuous way that I had been able to convey that to Ms. Tripp or get her to do that.

Q. Now, in—at some point in October of that year, 1997, did your job focus change?

A. Yes.

Q. And how was that? What were you doing?

A. Uh, it really changed on October 6th, 1997, as a result of a conversation with Linda Tripp.

Q. Uh, in that, as I understand, you sort of got secondhand information that you were probably never going back to work at the White House.

A. Correct.

Q. Did you understand what that meant? Did you accept that? And I guess why would you accept it at that point? Why would you give up on the White House?

MR. CACHERIS: Those are three questions, Mr. Bryant. Will you—would you break it down, please?

MR. BRYANT: Well, yeah, it's true.

BY MR. BRYANT:

Q. Do you understand? I guess I'm trying to clarify.

A. Not really. I'm sorry.

Q. Why would you accept at that point in October that you were never going back to the White House?

A. I don't really remember, I mean, what—what—what was going through my mind at that point as to—to answer that question. Is that—

Q. Okay.

A. I'm sorry.

Q. Certainly, if you don't remember, that's a—that's a good answer.

A. Okay.

Q. So you don't recall anything had really changed other than you had heard secondhand that you weren't going to go back. You have no independent recollection of anything else other than what somebody told you that would have changed—

A. My recollection is—

Q. —changed your focus?

A. —that it was this—it was this conversation, what Linda Tripp told me from whom this information was coming, the way it was relayed to me that—that shifted everything that day.

Q. And you didn't feel it was necessary to go back to the President and perhaps confront the President and say, "why am I not coming back, I want to come back?"

A. I mean, I had a discussion with the President, but I had made a decision from that based on that information, and I guess my—my experience of it coming up on a year from the election, having not been brought back, that it probably wasn't going to happen.

Q. But you—you did call the President about that time and then—but the focus had been changed toward perhaps a job in another location.

A. Yes and no. I didn't call him, but I, um—

Q. You called Betty—

A. —but we did have a discussion about that.

Q. You called Betty Currie, his secretary.

A. Yes.

Q. Okay, and then through her, he contacted you and you had a discussion?

A. Yes.

Q. And what did you tell him at that time about the job?

A. I believe I testified to that, so that my testimony is probably more accurate. The gist of it was, um, that I wanted to move to New York and that I was accepting I wasn't going to be able to come back to the White House, and I asked for his help.

Q. Did you bring up Vernon Jordan's name as perhaps somebody that could help you?

A. It's possible it was in that conversation.

Q. What was the President's comments back to you about your deciding to go to New York?

A. I don't remember his exact comments. He was accepting of the concept.

Q. In regards to your—your, uh, decision to search for a job in New York, in your comments to the President, did he ever tell you that that was good, that perhaps the Jones lawyers could not easily find you in New York?

A. I'm sorry. I don't—I—I—

MR. CACHERIS: Excuse me again, Mr. Bryant. That's a compound question. He could—she could answer it was good, and then she could answer maybe the Jones lawyer couldn't get her, but I think you'd want an answer to each question.

BY MR. BRYANT:

Q. Okay. Let me ask it this way. There has been some reference to that fact throughout the proceedings, and I recall seeing something somewhere in your—your testimony that you said it or he said it. Do you recall anything being said about you going to Washington—to New York and that the effect of that might be that you would be more difficult to find?

A. I believe that might have been mentioned briefly on the 28th of December, but not as a reason to go to New York, but as a possible outcome of being there. Does that—does that make sense?

Q. It does.

A. Okay.

Q. What, uh—what would have been the context of that? And we're jumping ahead to December the 28th, but what would have been the context of that particular conversation about the New York and being perhaps—the result being it might be difficult to find you, or more difficult? What was the context?

A. Um, I—I—if I remember correctly, it came sort of at the tail-end of a very short discussion we had about the Jones case.

Q. At this November the 11th meeting, did the President ask you to prepare a list, sort of a wish list for jobs?

A. I'm sorry. Which—

Q. I'm sorry. Did I say October? We're back to the October the 11th meeting. Did the President ask you to prepare a wish list?

A. Okay. We haven't gone to the October 11th meeting yet. I—I haven't said anything about that meeting yet.

Q. Okay.

A. The phone call was on the 9th.

Q. Okay, and you subsequently had a meeting, then, with the President on the 11th?

A. Correct.

Q. Face—face-to-face meeting?

A. Correct.

Q. And at that meeting, did he suggest you give him a wish list or Betty Currie a wish list?

A. Yes.

Q. Again, I asked a compound question there.

Who did he suggest you give the wish list to?

MR. CACHERIS: We're getting used to that.

MR. BRYANT: I'm getting good. I'm making my own objections now.

[Laughter.]

THE WITNESS: Um, we sustain those. No, I'm sorry.

[Laughter.]

MR. BRYANT: I can do that, too. I'll be doing that in a minute. Overruled. Okay.

THE WITNESS: Um, I—I believe he—he said I should get him a list, and the implication was through Betty.

BY MR. BRYANT:

Q. And obviously you prepared a list of—

A. Correct.

Q. —the people you'd like to work for in New York City.

A. Correct.

Q. And you sent that list—

A. Yes.

Q. —to Betty Currie or to the President?

A. I sent it to Ms. Currie.

Q. And also during this time—and I'm probably going to speed this up a little bit, but, uh, you did interview for the job at the United Nations?

A. Yes.

Q. And, uh—and through a process of several months there, or weeks at least, you did—made an offer to take a job at the United Nations and eventually declined it. Is that correct?

A. Correct.

Q. Did you in early November have the occasion to meet with Vernon Jordan about the job situation?

A. Yes.

Q. And how did you learn about that meeting?

A. I believe I asked Ms. Currie to check on the status of—I guess of finding out if I could have this meeting, and then she let me—she let me know to call Mr. Jordan's secretary?

Q. And you set up an appointment with Mr. Jordan, or did she, Ms. Currie, do that?

A. No. I set up an appointment. I think that was after a phone—well, I guess I don't—I don't know that, so sorry.

Q. But that appointment was November the 5th?

A. Yes.

Q. Prior to going to the meeting with Vernon Jordan, did you tell the President that you had a meeting with Mr. Jordan?

A. I don't think so. I don't remember.

Q. Did you carry any documents or any papers with you to the meeting with Mr. Jordan?

A. Yes.

Q. What were those?

A. My resume and a list of public relations firms in New York.

Q. Did Mr. Jordan ask you why you were there?

A. Yes.

Q. And what did you say?

A. I was hoping to move to New York and that he could assist me in securing a job there.

Q. Did he ask you why you wanted to leave Washington?

A. Yes.

Q. And what was your answer?

A. I gave him the vanilla story of, um, that I—I think I—I don't remember exactly what I said. I—I believe I've testified to this. I think it was something about wanting to get out of Washington.

Q. The vanilla story. You mean sort of an innocuous set of reasons, not really the true reasons you wanted to leave?

A. Yes.

Q. And what were the true reasons you wanted to leave?

A. Because I couldn't go back to the White House.

Q. Did—did you think Mr. Jordan accepted—did you think he would accept that vanilla story, or did you feel like he understood the real story?

A. No, I felt he accepted it.

Q. Did Mr. Jordan tell you during this meeting that he had already spoken with the President?

A. It was—I believe so.

Q. And that you had come highly recommended, I think?

A. Yes.

Q. Did he, Mr. Jordan, review your list of job preferences and suggest anything?

A. Yes.

Q. And what did he suggest?

A. He said the names of the—he looked at the list of public relations firms and I think sort of said, "oh, I've heard of them, I haven't heard of these people, have you heard of so and so," that I hadn't heard of.

Q. Your meeting lasted about 20 minutes?

A. If that's what I've testified to, then I accept that.

Q. It is, or close to it. I know this is an approximation, but thereabouts. You weren't there all day.

A. I had—well, I don't—I don't remember how long it was right now. I know I've testified to that. So if I said 20 minutes, then—

Q. Did you have a conversation with the President on—about a week later on November the 12th and by telephone?

A. Yes.

Q. And did you indicate there you had spoken with Mr. Jordan about a job?

A. Yes.

Q. After you met with Mr. Jordan, did you—did you have an impression that you would get, uh—get a job, get favorable results in your job search?

A. Yes.

Q. Did anything favorable happen to—in your job search from that November the 5th, 1997, meeting until Thanksgiving?

A. No, but I believe Mr. Jordan was out of town for a week or two.

Q. During the weeks after this November the 5th interview, did you try to contact Mr. Jordan?

A. Yes.

Q. How?

A. First, I sent him a thank-you note for the initial meeting, and I believe I placed some phone calls right before Thanksgiving—maybe a phone call. I don't remember if it was more than one.

Q. What—what happened with respect to the job search, uh, through there, through Thanksgiving? Was there anything? I mean, I know he—you said he was out of town, but did anything, to your knowledge, occur? Could you see any results up to Thanksgiving?

A. From my meeting with Mr. Jordan?

Q. Yes.

A. No.

Q. Did you contact Betty Currie after you received no response from Mr. Jordan?

A. Yes.

Q. And did she page you? I think you were in Los Angeles at the time.

A. Correct.

Q. Okay. What—what did she tell you as a result of that telephone call?

A. She asked me to place a call to Mr. Jordan, which I did.

Q. And this would have been, again, around November the 26th, shortly—well, around Thanksgiving?

A. It was before Thanksgiving.

Q. And I assume you found Mr. Jordan.

A. Yes.

Q. And what did he tell you?

A. That he was working on it.

Q. Did he tell you to call him back?

A. Yes.

Q. Did you indeed call him back

A. I didn't actually get ahold of him; he was out-of-town that day. I think it was December 5th.

Q. Did you try to meet with the President during this time?

A. Yes.

Q. How did you do that?

A. I was a pest. I sent a note to Ms. Currie and asked her to pass it along to the President, requesting that I meet with him.

Q. Were you successful in having a meeting as a result of those efforts?

A. I don't know if it was a result of those efforts, but yes, I ended up having a meeting with the President.

Q. And when would that have been; what day?

A. On the 6th of December 1997.

Q. Again you are going through Betty Currie; is that, again, the standard procedure at that time?

A. Yes.

Q. Did you go—I think you spoke also perhaps to Betty Currie on December the 5th, the day before the meeting—

A. Yes.

Q. —and this was something about attending the President's speech. Was that when that occurred—or the radio address, or something? Does that ring any bells?

A. No.

Q. Did—you did attend the Christmas party that day—
A. Yes.
Q. —and the White House. And you saw the President?
A. Yes.
Q. Just socially, speak to him, and that's it?
A. Yes.
Q. Picture, handshaking, and that?
A. [Nodding head.]
Q. Okay. That's a yes?
A. Yes. Sorry.
Q. Prior to December 6th, 1997, had you purchased a Christmas gift for the President?
A. Yes.
Q. Which was?
A. An antique standing cigar holder.
Q. And had you purchased any other additional gifts for him?
A. Yes.
Q. And what were those?
A. Uh, a Starbucks mug that said "Santa Monica"; a necktie that I got in London; a little box—I call it a "chochki"—from, uh—and an antique book on Theodore Roosevelt.
Q. Was it your intention to, to carry those Christmas presents to the President home that Saturday, December the 6th?
A. If I were to have a meeting with him, yes.
Q. Did you attempt to have a meeting?
A. Yes.
Q. Did you go through Betty Currie?
A. Yes. I sent her the letter to, to give to the President.
Q. And when you went to the White House that day, you also attempted to, to have the meeting through calling Betty Currie and telephoning her; I believe you had to go to—
A. Which day? I'm sorry.
Q. On the 6th.
A. No.
Q. The Saturday.
A. [No response.]
Q. No?
A. I—I attempted to give the presents to Betty, but I didn't call and attempt to have a meeting there—well, I guess I called in the morning, so that's not true—I'm sorry. Yes, I called Ms. Currie in the morning trying to see if I could see the President and apologize.
Q. And—were you—did you see the President, then, on the 6th?
A. Yes, I did.
Q. Tell us about that meeting—that was a long—was that, uh—did you have a telephone conversation with him that day also?
A. Yes.
Q. And that was the long telephone conversation?
A. It—it was.
Q. Okay. I think there has been some indication it may have been 56 minutes, something approximating an hour-long conversation; does that sound right?
A. Right. That would—that might include some conversation time with Ms. Currie as well.
Q. Okay. Was he interrupted by Ms. Currie—could you tell—did he have to take a break from the telephone call to talk to Ms. Currie, or do you recall any, any—
A. I don't recall that.
Q. —do you recall any breaks to talk to anybody else?
A. I don't recall that. Doesn't mean it didn't happen; I just don't remember it.
Q. What else did you—did you arrange in that telephone conversation, or did he invite you in that telephone conversation to come to the White House that day?
A. Yes, he did.
Q. What happened during, during that conversation in terms of—I understand that it was again an emotional day, some sort of a word fight; is that right?

A. Yes.

Q. Could you tell me—he was, uh—again, to perhaps save some time—he was angry about an earlier incident, and, uh, he felt like you were intruding on his lawyer time?

A. Uh, he was upset that I hadn't accepted that he just couldn't see me that day.

Q. And what was your response to that?

A. Probably not positive. Uh, that's why it was a fight.

Q. Again, I want to be careful that I don't put words in your mouth, but you were dealing with this relationship from an emotional standpoint of wanting to spend time with him—

A. Yes.

Q. —not as President, but as a man?

A. Correct.

Q. And this was at a point when you didn't feel like you were spending enough time with him?

A. Correct.

Q. And he obviously felt he had to do other things, too, talk to lawyers and do those kinds of things—be the President—is that right?

A. Yes.

Q. Okay. Now, was some of this discussion that we term "the fight," was that over the telephone?

A. Yes. It was all over the telephone.

Q. So by the time you arrived and had the face-to-face meeting with him, that was over?

A. Correct.

Q. Was that during the time that you exchanged—exchanged some of the Christmas presents with him?

A. In—in the meeting?

Q. Yes.

A. Yes. I gave him my Christmas presents.

Q. Did you discuss the job search with him also at that time?

A. I believe I mentioned it.

Q. Did you tell him that, uh, your job search with Mr. Jordan was not going well?

A. I don't know if I used those words. I don't, I don't remember exactly—

Q. If your grand jury testimony said yes—I mean, words to that effect—that would—you could have used those words if they're in your grand jury—

A. If my grand jury testimony says that—if that's what I said in my grand jury testimony, then I accept that.

Q. I'm not trying to—I'm not trying to trick you.

A. Okay.

Q. Did he make any comment to you about what he might do to aid in your job search at that time, if you recall?

A. I think he—I think he said, oh, let me see about it, let me see what I can do—his usual.

Q. Did, uh, did the President say anything to you at that time about your name appearing on a witness list in the Paula Jones case?

A. No.

Q. Did you later learn that your name had appeared on such a list?

A. Yes.

Q. And did you later learn that that witness list had been faxed to the White House—to the President's lawyers on December the 5th?

A. Much later, as in last year.

Q. Okay. Yes—that's what I mean—later.

A. I, I mean—

Q. Yes.

A. —post this investigation.

Q. Okay. All right. Let's go forward another week or so to December the 11th and a lunch that you had with Vernon Jordan, I believe, in his office.

A. Yes.

Q. How did—how was that meeting set up.

A. Through his secretary.

Q. Did you instigate that, or did he call through his secretary?

A. I don't remember.

Q. What was the purpose of that meeting?

A. Uh, it was to discuss my job situation.

Q. And what, what—how was that discussed?

A. Uh, Mr. Jordan gave me a list of three names and suggested that I contact these people in a letter that I should cc him on, and that's what I did.

Q. Did he ask you to copy him on the letters that you sent out?

A. Yes.

Q. During this meeting, did he make any comments about your status as a friend of the President?

A. Yes.

Q. What—what did he say?

A. In one of his remarks, he said something about me being a friend of the President.

Q. And did you respond?

A. Yes.

Q. How?

A. I said that I didn't, uh—I think I—my grand jury testimony, I know I talked about this, so it's probably more accurate. My memory right now is I said something about, uh, seeing him more as, uh, a man than as a President, and I treated him accordingly.

Q. Did you express your frustration to Mr. Jordan with, uh, with the President?

A. I expressed that sometimes I had frustrations with him, yes.

Q. And what was his response to you about, uh—after you talked about the President?

A. Uh, he sort of jokingly said to me, You know what your problem is, and don't deny it—you're in love with him. But it was a sort of light-hearted nature.

Q. Did you—did you have a response to that?

A. I probably blushed or giggled or something.

Q. Do you still have feelings for the President?

A. I have mixed feelings.

Q. What, uh—maybe you could tell us a little bit more about what those mixed feelings are.

A. I think what you need to know is that my grand jury testimony is truthful irrespective of whatever those mixed feelings are in my testimony today.

Q. I know in your grand jury you mentioned some of your feelings that you felt after he spoke publicly about the relationship, but let me ask you more about the positive—you said there were mixed feelings. What about—do you still, uh, respect the President, still admire the President?

A. Yes.

Q. Do you still appreciate what he is doing for this country as the President?

A. Yes.

Q. Sometime back in December of 1997, in the morning of December the 17th, did you receive a call from the President?

A. Yes.

Q. What was the purpose of that call? What did you talk about?

A. It was threefold—first, to tell me that Ms. Currie's brother had been killed in a car accident; second, to tell me that my name was on a witness list for the Paula Jones case; and thirdly, he mentioned the Christmas present he had for me.

Q. This telephone call was somewhere in the early morning hours of 2 o'clock to 2:30.

A. Correct.

Q. Did it surprise you that he called you so late?

A. No.

Q. Was this your first notice of your name being on the Paula Jones witness list?

A. Yes.

Q. I realize he, he commented about some other things, but I do want to focus on the witness list.

A. Okay.

Q. Did he say anything to you about how he felt concerning this witness list?

A. He said it broke his heart that, well, that my name was on the witness list. Can I take a break, please? I'm sorry.

SENATOR DeWINE: Sure, sure. We'll take a 5-minute break at this point.

THE VIDEOGRAPHER: This marks the end of Videotape Number 1 in the deposition of Monica S. Lewinsky. We are going off the record at 10:56 a.m.

[Recess.]

THE VIDEOGRAPHER: This marks the beginning of Videotape Number 2 in the deposition of Monica S. Lewinsky. The time is 11:10 a.m.

SENATOR DeWINE: We are now back on the record.

I will advise the House Managers that they have used one hour and 8 minutes.

Mr. Bryant, you may proceed.

MR. BRYANT: Thank you.

By MR. BRYANT:

Q. Did—did we get your response? We were talking about the discussion you were having with the President over the telephone, early morning of the December 17th phone call, and he had, uh, mentioned that it broke his heart that you were on that list.

A. Correct.

Q. And I think you were about to comment on that further, and then you need a break.

A. No.

Q. No.

A. I just wanted to be able to focus—I know this is an important date, so I felt I need a few moments to be able to focus on it.

Q. And you're comfortable now with that, with your—you are ready to talk about that?

A. Comfortable, I don't know, but I'm ready to talk about.

Q. Well, I mean comfortable that you can focus on it.

A. Yes, sir.

Q. Good. Now, with this discussion of the fact that your name appeared as a witness, had you—had you been asleep that night when the phone rang?

A. Yes.

Q. So were you wide awake by this point? It's the President calling you, so I guess you're—you wake up.

A. I wouldn't say wide awake.

Q. He expressed to you that your name—you know, again, you talked about some other things—but he told you your name was on the list.

A. Correct.

Q. What was your reaction to that?

A. I was scared.

Q. What other discussion did you have in regard to the fact that your name was on the list? You were scared; he was disappointed, or it broke his heart. What other discussion did you have?

A. Uh, I believe he said that, uh—and these are not necessarily direct quotes, but to the best of my memory, that he said something about that, uh, just because my name was on the list didn't necessarily mean I'd be subpoenaed; and at some point, I asked him what I should do if I received a subpoena. He said I should, uh, I should let Ms. Currie know. Uh—

Q. Did he say anything about an affidavit?

A. Yes.

Q. What did he say?

A. He said that, uh, that I could possibly file an affidavit if I—if I were subpoenaed, that I could possibly file an affidavit maybe to avoid being deposed.

Q. How did he tell you you would avoid being deposed by filing an affidavit?

A. I don't think he did.

Q. You just accepted that statement?

A. [Nodding head.]

Q. Yes?

A. Yes, yes. Sorry.

Q. Are you, uh—strike that. Did he make any representation to you about what you could say in that affidavit or—

A. No.

Q. What did you understand you would be saying in that affidavit to avoid testifying?

A. Uh, I believe I've testified to this in the grand jury. To the best of my recollection, it was, uh—to my mind came—it was a range of things. I mean, it could either be, uh, something innocuous or could go as far as having to deny the relationship. Not being a lawyer nor having gone to law school, I thought it could be anything.

Q. Did he at that point suggest one version or the other version?

A. No. I didn't even mention that, so there, there wasn't a further discussion—there was no discussion of what would be in an affidavit.

Q. When you say, uh, it would be—it could have been something where the relationship was denied, what was your thinking at that point?

A. I—I—I think I don't understand what you're asking me. I'm sorry.

Q. Well, based on prior relations with the President, the concocted stories and those things like that, did this come to mind? Was there some discussion about that, or did it come to your mind about these stories—the cover stories?

A. Not in connection with the—not in connection with the affidavit.

Q. How would—was there any discussion of how you would accomplish preparing or filing an affidavit at that point?

A. No.

Q. Why—why didn't you want to testify? Why would not you—why would you have wanted to avoid testifying?

A. First of all, I thought it was nobody's business. Second of all, I didn't want to have anything to do with Paula Jones or her case. And—I guess those two reasons.

Q. You—you have already mentioned that you were not a lawyer and you had not been to law school, those kinds of things. Did, uh, did you understand when you—the potential legal problems that you could have caused yourself by allowing a false affidavit to be filed with the court, in a court proceeding?

A. During what time—I mean—I—can you be—I'm sorry—

Q. At this point, I may ask it again at later points, but the night of the telephone—

A. Are you—are you still referring to December 17th?

Q. The night of the phone call, he's suggesting you could file an affidavit. Did you appreciate the implications of filing a false affidavit with the court?

A. I don't think I necessarily thought at that point it would have to be false, so, no, probably not. I don't—I don't remember having any thoughts like that, so I imagine I would remember something like that, and I don't, but—

Q. Did you know what an affidavit was?

A. Sort of.

Q. Of course, you're talking at that time by telephone to the President, and he's—and he is a lawyer, and he taught law school—I don't know—did you know that? Did you know he was a lawyer?

A. I—I think I knew it, but it wasn't something that was present in my, in my thoughts, as in he's a lawyer, he's telling me, you know, something.

Q. Did the, did the President ever tell you, caution you, that you had to tell the truth in an affidavit?

A. Not that I recall.

Q. It would have been against his interest in that lawsuit for you to have told the truth, would it not?

A. I'm not really comfortable—I mean, I can tell you what would have been in my best interest, but I—

Q. But you didn't file the affidavit for your best interest, did you?

A. Uh, actually, I did.

Q. To avoid testifying.

A. Yes.

Q. But had you testified truthfully, you would have had no—certainly, no legal implications—it may have been embarrassing, but you would have not had any legal problems, would you?

A. That's true.

Q. Did you discuss anything else that night in terms of—I would draw your attention to the cover stories. I have alluded to that earlier, but, uh, did you talk about cover story that night?

A. Yes, sir.

Q. And what was said?

A. Uh, I believe that, uh, the President said something—you can always say you were coming to see Betty or bringing me papers.

Q. I think you've testified that you're sure he said that that night. You are sure he said that that night?

A. Yes.

Q. Now, was that in connection with the affidavit?

A. I don't believe so, no.

Q. Why would he have told you you could always say that?

A. I don't know.

Mr. BURTON: Objection. You're asking her to speculate on someone else's testimony.

MR. BRYANT: Let me make a point here. I've been very patient in trying to get along, but as I alluded to earlier, and I said I am not going to hold a hard line to this, but I don't think the President's—the witness' lawyers ought to be objecting to this testimony. If there's an objection here, it should come from the White House side, nor should they be—

SENATOR DeWINE: Counsel, why don't you rephrase the question?

MR. BRYANT: Do we have a clear ruling on whether they can object?

SENATOR DeWINE: We'll go off the record for a moment.

THE VIDEOGRAPHER: We're going off the record at 11:20 a.m.

[Recess.]

THE VIDEOGRAPHER: We are going back on the record at 11:30 a.m.

SENATOR DeWINE: We are now back on the record.

It's our opinion that counsel for Ms. Lewinsky do have the right to make objections. We would ask them to be as short and concise as humanly possible. So we will now proceed.

Mr. Bryant?

MR. BRYANT: Thank you, Senator.

BY MR. BRYANT:

Q. Let's kind of bring this back together again, and I'll try to ask sharper questions and avoid these objections.

We're at that point that we've got a telephone conversation in the morning with you and the President, and he has among other things mentioned to you that your name is on the Jones witness list. He has also mentioned to you that perhaps you could file an affidavit to avoid possible testifying in that case. Is that right?

A. Correct.

Q. And he has also, I think, now at the point that we were in our questioning, referenced the cover story that you and he had had, that perhaps you could say that you were coming to my office to deliver papers or to see Betty Currie; is that right?

A. Correct. It was from the entire relationship, that story.

Q. Now, when he alluded to that cover story, was that instantly familiar to you?

A. Yes.

Q. You knew what he was talking about?

A. Yes.

Q. And why was this familiar to you?

A. Because it was part of the pattern of the relationship.

Q. Had you actually had to use elements of this cover story in the past?

A. I think so, yes.

Q. Did the President ever tell you what to say if anyone asked you about telephone conversations that you had had with him?

A. Are we—are we still focused on December 17th?

Q. No, no.

A. Okay.

Q. It did not have to be that night. Did he ever?

A. If I could just—I—I'm pretty date-oriented, so if you could just be more specific with the date. If we're staying on a date or leaving that date, it would just help me. I'm sorry.

Q. Well, my question was phrased did he ever do that, but—

A. Okay.

Q. Well, I—I'm sorry. I'm playing guessing games with you. Was there a conversation on March 29th of 1997 when the President told you he thought perhaps his telephone conversations were being tapped or taped—either way, or both—by a foreign embassy?

A. Yes.

Q. And was there some reference to some sort of cover story there in the event that his line was tapped?

A. Yes.

Q. And what was that?

A. That—I think, if I remember it correctly, it was that we—that he knew that we were sort of engaging in those types of conversations, uh, knowing that someone was listening, so that it was not for the purposes that it might have seemed.

Q. Did you find it a little strange that he would express concern about possible eavesdropping and still persist in these calls to you?

A. I don't think phone calls of that nature occurred and happened right after, or soon after that discussion. I think it was quite a few months until that resumed.

Q. I think my question was more did you not find it a little strange that he felt that perhaps his phone was being tapped and conversations taped by a foreign embassy, and he—

A. I—I thought it was strange, but if—I mean, I wasn't going to question what he was saying to me.

Q. But that he also continued to make the calls—you're saying he didn't make any calls after that?

A. No. My understanding was it was referencing a certain type of phone call, certain nature of phone call, uh, and those—

Q. Let me direct your attention back to a point I did not mention a couple—a few days before the December—early December telephone call, the lengthy telephone call from the President. We had talked about how that was a heated conversation.

A. Correct.

Q. At—did at some point during that telephone conversation—did the tone—did the President's tone change to a more receptive, friendly conversation?

A. Yes.

Q. Do you know why that happened?

A. No, nor do I remember whose tone changed first. I mean, we made up, so—

Q. Okay. Now let me go back again to the December 11th date—I'm sorry—the 17th. This is the conversation in the morning. What else—was there anything else you talked about in terms of—other than your name being on the list and the affidavit and the cover story?

A. Yes. I had—I had had my own thoughts on why and how he should settle the case, and I expressed those thoughts to him. And at some point, he mentioned that he still had this Christmas present for me and that maybe he would ask Mrs. Currie to come in that weekend, and I said not to because she was obviously going to be in mourning because of her brother.

Q. In—in that—in that relationship with the President, I think you have expressed in your testimony somewhere that you weren't necessarily jealous of those types of people like Kathleen Willey or Paula Jones, and perhaps you didn't even believe those stories occurred as—as they alleged.

A. That's correct. I don't—I don't know, jealous or not jealous. I don't think I've testified to my feelings of jealousy, but the latter half of the question is true.

Q. I—I saw it. I mean, it's not a major point. I thought I saw that in your testimony, that particular word.

A. Okay. If I said that, then I—I don't.

Q. Was it your belief that the Paula Jones case was not a valid lawsuit? Was that part of that discussion that night, or your strategy?

A. Uh, can I separate that—that into two questions?

Q. Any way, any way you want to.

A. Okay. I don't believe it was a valid lawsuit, and I don't think whether I believed it was a valid lawsuit or not was the topic of the conversation.

Q. Okay, that's a fair answer.

You believe the President's version of the Paula Jones incident?

A. Is that relevant to—

Q. I—I just asked you the question.

A. I don't believe Paula Jones' version of the story.

Q. Okay, good. That's a fair answer.

You have testified previously that you tried to maintain secrecy regarding this relationship—and we're talking about obviously with the President. Is that true?

A. Yes.

Q. And to preserve the secrecy and I guess advance this cover story, you would bring papers to the President and always use Betty Currie for the excuse for you to be WAVE'd in. Is that right?

A. Papers when I was working at the White House and Mrs. Currie after I left the White House. So Mrs. Currie wasn't involved when I was working at the White House.

Q. Were these papers you carried in to the President—were they—were they business documents, or were they more personal papers from you to him?

A. They—they weren't business documents.

Q. So, officially, you were not carrying in official papers?

A. Correct.

Q. You were carrying in personal papers that would not have entitled you ordinarily to go see the President?

A. Correct.

Q. When—in this procedure where Betty Currie was always the one that WAVE'd you in to the White House—and I—I don't know if the people who may be watching this deposition, the Senators, understand that the WAVES process is just the—to give the guards the okay for you to come in. Is that a short synopsis?

A. I'm not really versed on—

Q. I'm not either. You know more than I do, probably, since you worked there, but—

A. Well, I know you had to go, you had to type in a thing in at WAVES, and now you have to give a Social Security, birth date, have to show ID.

Q. Is there a record kept of that?

A. I believe so.

Q. Was it always Betty Currie that WAVE'd you in to the—access to the White House? I'm talking about now after you left and went to work at the Pentagon.

A. No.

Q. Other people did that?

A. There were other reasons that I came to the White House at times.

Q. Did you ever ask the President if he would WAVE you in?

A. Yes.

Q. Did he ever do that?

A. No, not to my—not to my knowledge.

Q. Was there a reason? Did he express anything to you why he would or would not?

A. Yes. He said that, uh—I believe he said something about that there's a specific list made of people that he requests to come in and—and there are people who have access to that list.

Q. So, obviously, he didn't want your name being on that list?

A. Correct.

Q. Now, some of those people—

A. I think—well, that's my understanding.

Q. Would some of those people be the people that worked outside his office, Ms. Lieberman and those—those folks?

A. I—I believe so, but I'm not really sure.

Q. Did you not want those people to know that you were inside the White House?

A. I didn't.

Q. Why is that?

A. Because they didn't like me.

Q. Would they have objected, do you think—if you know.

A. I don't know.

Q. Did you work with Betty Currie on occasions to—to get in to see the President, perhaps bypass some of these people?

A. Yes.

Q. And that would be another way that you would conceal the meeting with the President, by using Betty Currie to get you in?

A. I—I think, yes, be cautious of it.

Q. Did—well, I think we've covered that, about some papers, and I think we've covered that after you left your job inside the White House with Legislative Affairs and went to the Pentagon, you developed a story, a cover story to the effect that you were going to see Betty, that's how you would come in officially?

A. Correct.

Q. And during that time that you were at the Pentagon, you would more likely visit him on weekends or during the week? Which would—which would—

A. Weekends.

Q. Weekends. And why—why the weekends?

A. First, I think he had less work, and second of all, there were—I believe there were less people around.

Q. Now, whose idea was it for you to come on weekends?

A. I believe it was the President's.

Q. When you—when the President was in his office, was your purpose to go there and see him? If he was in the office, you would go see him?

A. What—I'm sorry.

Q. No—that's not clear. I'll withdraw that question.

Was Ms. Currie, the President's secretary—was she in the loop, so to speak, in keeping this relationship and how you got in and out of the White House, keeping that quiet?

A. I think I actually remember reading part of my grand jury testimony about this and that it was more specific in that she was in the loop about my friendship with the President, but I just want to not necessarily—there was a clarification, I believe, in that about knowledge of the complete relationship or not. So—

Q. She would help with the gifts and notes and things like that—the passing?

A. Yes.

Q. Would you agree that these cover stories that you've just testified to, if they were told to the attorneys for Paula Jones, that they would be misleading to them and not be the whole story, the whole truth?

A. They would—yes, I guess misleading. They were literally true, but they would be misleading, so incomplete.

Q. As I understand your testimony, too, the cover stories were reiterated to you by the President that night on the telephone—

A. Correct.

Q. —and after he told you you would be a witness—or your name was on the witness list, I should say?

A. Correct.

Q. And did you understand that since your name was on the witness list that there would be a possibility that you could be subpoenaed to testify in the Paula Jones case?

A. I think I understood that I could be subpoenaed, and there was a possibility of testifying. I don't know if I necessarily thought it was a subpoena to testify, but—

Q. Were you in fact subpoenaed to testify?

A. Yes.

Q. And that was what—

A. December 19th, 1997.

Q. December 19th.

Now, you have testified in the grand jury. I think your closing comments was that no one ever asked you to lie, but yet in that very conversation of December the 17th, 1997 when the President told you that you were on the witness list, he also suggested that you could sign an affidavit and use misleading cover stories. Isn't that correct?

A. Uh—well, I—I guess in my mind, I separate necessarily signing affidavit and using misleading cover stories. So, does—

Q. Well, those two—

A. Those three events occurred, but they don't—they weren't linked for me.

Q. But they were in the same conversation, were they not?

A. Yes, they were.

Q. Did you understand in the context of the conversation that you would deny the—the President and your relationship to the Jones lawyers?

A. Do you mean from what was said to me or—

Q. In the context of that—in the context of that conversation, December the 17th—

A. I—I don't—I didn't—

Q. Okay. Let me ask it. Did you understand in the context of the telephone conversation with the President that early morning of December the 17th—did you understand that you would deny your relationship with the President to the Jones lawyers through use of these cover stories?

A. From what I learned in that—oh, through those cover stories, I don't know, but from what I learned in that conversation, I thought to myself I knew I would deny the relationship.

Q. And you would deny the relationship to the Jones lawyers?

A. Yes, correct.

Q. Good.

A. If—if that's what it came to.

Q. And in fact you did deny the relationship to the Jones lawyers in the affidavit that you signed under penalty of perjury; is that right?

A. I denied a sexual relationship.

Q. The President did not in that conversation on December the 17th of 1997 or any other conversation, for that matter, instruct you to tell the truth; is that correct?

A. That's correct.

Q. And prior to being on the witness list, you—you both spoke—

A. Well, I guess any conversation in relation to the Paula Jones case. I can't say that any conversation from the—the entire relationship that he didn't ever say, you know, "Are you mad? Tell me the truth." So—

Q. And prior to being on the witness list, you both spoke about denying this relationship if asked?

A. Yes. That was discussed.

Q. He would say something to the effect that—or you would say that—you—you would deny anything if it ever came up, and he would nod or say that's good, something to that effect; is that right?

A. Yes, I believe I testified to that.

Q. Let me shift gears just a minute and ask you about—and I'm going to be delicate about this because I'm conscious of people here in the room and my—my own personal concerns—but I want to refer you to the first so-called salacious occasion, and I'm not going to get into the details. I'm not—

A. Can—can we—can you call it something else?

Q. Okay.

A. I mean, this is—this is my relationship—

Q. What would you like to call it?

A. —so, I mean, is—

Q. This is the—or this was—

A. It was my first encounter with the President, so I don't really see it as my first salacious—that's not what this was.

Q. Well, that's kind of been the word that's been picked up all around. So—

A. Right.

Q. —let's stay on this first—

A. Encounter, maybe?

Q. Encounter, okay.

A. Okay.

Q. So we all know what we're talking about. You had several of these encounters, perhaps 10 or 11 of these encounters; is that right?

A. Yes.

Q. Okay. Now, with regard to the first one on November the 15th, 1995, you have testified to a set of facts where the President actually touched you in certain areas—is that right—and that's—that's where I want to go. That's as far as I want to go with that question.

MR. CACHERIS: If that's as far as it goes, we will not object—

MR. BRYANT: Okay.

MR. CACHERIS: —and if it goes any further, we will object.

MR. BRYANT: Okay.

BY MR. BRYANT:

Q. You have testified to that?

A. Yes.

Q. And I have the excerpts out, and I don't—but they've been adopted and affirmed as true. So I'm not going to get—get you looking at—have you read those excerpts.

A. I appreciate that.

Q. Now, in the—in later testimony before the grand jury, you were given a definition, and in fact it was the same definition that was used in the Paula Jones lawsuit, of "sexual relations." Do you recall the—

A. So I've read.

Q. Yes.

A. I was not shown that definition.

Q. But you were asked a question that incorporated that definition.

A. Not prior to this whole—not prior to the Independent Counsel getting involved.

Q. But—no—it was the Independent Counsels themselves who asked you this question.

A. Right. Oh, so you're—you're saying in the grand jury, I was shown a definition of—

Q. Right.

A. Yes, that's correct.

Q. And you admitted in that answer to that question that the conduct that you were involved in, the encounter of November the 15th, 1995, fit within that definition of "sexual relations"?

A. The second encounter of that evening did.

Q. Right.

And were there other similar encounters later on with the President, not that day, but other occasions that would have likewise fit into that definition of "sexual relations" in the Paula Jones case?

A. Yes. And—yes.

Q. There was more than one occasion where that occurred?

A. Correct.

Q. So, if the President testifies that he did not—he was not guilty of having a sexual relationship under the Paula Jones definition even, then that testimony is not truthful, is it?

MR. CACHERIS: Objection. She should not be called upon to testify what was in the mind of another person. She's testifying to the facts, and she has given the facts.

MR. BRYANT: I would ask that she answer the question.

SENATOR DeWINE: Go ahead.

SENATOR LEAHY: The objection is noted for the record.

SENATOR DeWINE: The objection is noted. She may answer the question.

THE WITNESS: I—I really—

SENATOR LEAHY: If she can.

THE WITNESS: —don't feel comfortable characterizing whether what he said was truthful or not truthful. I know I've testified to what I believe is true.

BY MR. BRYANT:

Q. Well, truth is not a wandering standard.

A. Well—

Q. I would hope not. But you have testified, as I've told you, that what you and he did together on November the 15th, 1995 fit that definition of the Paula Jones, and you've indicated that there were other occasions that likewise—

A. Yes, sir.

Q. —that that occurred.

But now the President has indicated as a part of his specific defense—he has filed an answer with this Senate denying that this occurred, that he did these actions.

A. I know. I'm not trying to be difficult, but there is a portion of that definition that says, you know, with intent, and I don't feel comfortable characterizing what someone else's intent was.

I can tell you that I—my memory of this relationship and what I remember happened fell within that definition.

If you want to—I don't know if there's another way to phrase that, but I'm just not comfortable commenting on someone else's intent or state of mind or what they thought.

Q. Let's move forward to December the 19th, 1997, at that point you made reference to earlier.

A. I'm sorry. Can you repeat the date again? I'm sorry.

Q. Yes. December the 19th, 1997.

A. Okay, sorry.

Q. At that point where you testified that you received a subpoena in the Paula Jones case, and that was, of course, on December the 19th, 1997.

Do you recall the specific time of day and where you were when you were served with the subpoena?

A. I was actually handed the subpoena at the Metro entrance of the Pentagon—at the Pentagon, and the time—I think it was around 4:30—4—I—I—if I've testified to something different, then, I accept whatever I testified to, closer to the date. Sometime in the late afternoon.

Q. Did they call you, and you had to come out of your office and go outside—

A. Correct.

Q. —and do that?

Okay. And what did you do after you accepted service of the subpoena?

A. I started crying.

Q. Did he just give it to you and walk away, or did he give you any kind of explanation?

A. I think I made a stink. I think I was trying to hope that he would convey to the Paula Jones attorneys that I didn't know why they were doing this, and this is ridiculous, and he said something or another, there is a check here for witness fee. And I said I don't want their stinking money, and so—

Q. What did you do after, after you got through the emotional part?

A. I went to a pay phone, and I called Mr. Jordan.

Q. Any reason you went to a pay phone, and why did you call Mr. Jordan? Two questions, please.

A. First is because my office in the Pentagon was probably a room this size and has—let's see, one, two, three, four—four other people in it, and there wasn't much privacy. So that I think that's obvious why I wouldn't want to discuss it there.

And the second question was why Mr. Jordan—

Q. Why did you call Mr. Jordan; yes.

A. Because I couldn't call Mrs. Currie because it was—I hadn't expected to be subpoenaed that soon. So she was grieving with her brother's passing away, and I didn't know who else to turn to. So—

Q. And what—what occurred with that conversation with Mr. Jordan?

A. Well, I remember that—that he couldn't understand me because I was crying. So he kept saying: "I don't understand what you're saying. I don't understand what you're saying."

And I just was crying and crying and crying. And so all I remember him saying was: "Oh, just come here at 5 o'clock."

So I did.

Q. You went to see Mr. Jordan, and you were inside his office after 5 o'clock, and you did—is that correct?

A. Yes.

Q. Were—were you interrupted, in the office?

A. Yes. He received a phone call.

Q. And you testified that you didn't know who that was that called?

A. Correct.

Q. Did you excuse yourself?

A. Yes.

Q. What—after you came back in, what—what occurred? Did he tell you who he had been talking to?

A. No.

Q. Okay. What happened next?

A. I know I've testified about this—

Q. Yes.

A. —so I stand by that testimony, and my recollection right now is when I came back in the room, I think shortly after he had placed a phone call to—to Mr. Carter's office, and told me to come to his office at 10:30 Monday morning.

Q. Did you know who Mr. Carter was?

A. No.

Q. Did Mr. Jordan tell you who he was?

A. No—I don't remember.

Q. Did you understand he was going to be your attorney?

A. Yes.

Q. Did you express any concerns about the—the subpoena?

A. I think that happened before the phone call came.

Q. Okay, but did you express concerns about the subpoena?

A. Yes, yes.

Q. And what were those concerns?

A. In general, I think I was just concerned about being dragged into this, and I was concerned because the subpoena had called for a hatpin, that I turn over a hatpin, and that was an alarm to me.

Q. How—in what sense was it—in what sense was it an alarm to you?

A. The hatpin being on the subpoena was evidence to me that someone had given that information to the Paula Jones people.

Q. What did Mr. Jordan say about the subpoena?

A. That it was standard.

Q. Did he have any—did he have any comment about the specificity of the hatpin?

A. No.

Q. And did you—

A. He just kept telling me to calm down.

Q. Did you raise that concern with Mr. Jordan?

A. I don't remember if—if I've testified to it, then yes. If—I don't remember right now.

Q. Did—would you have remembered then if he made any comment or answer about the hatpin?

A. I mean, I think I would.

Q. And you don't remember?

A. I—I remember him saying something that it was—you know, calm down, it's a standard subpoena or vanilla subpoena, something like that.

Q. Did you ask Mr. Jordan to call the President and advise him of the subpoena?

A. I think so, yes. I asked him to inform the President. I don't know if it was through telephone or not.

Q. And you did that because the President had asked you to make sure you let Betty know that?

A. Well, sure. With Betty not being in the office, I couldn't—there wasn't anyone else that I could call to get through to him.

Q. Did Mr. Jordan say to you when he might see the President next?

A. I believe he said he would see him that evening at a holiday reception.

Q. Did Mr. Jordan during that meeting make an inquiry about the nature of the relationship between you and the President?

A. Yes, he did.

Q. What was that inquiry?

A. I don't remember the exact wording of the questions, but there were two questions, and I think they were something like did you have sex with the President or did he—and if—or did he ask for it or some—something like that.

Q. Did you—what did you suspect at that point with these questions from Mr. Jordan in terms of did he know or not know about this?

A. Well, I wasn't really sure. I mean, two things. I think there is—I know I've testified to this, that there was another component to all of this being Linda Tripp and her—what she might have led me to believe or led me to think and how that might have characterized how I was perceiving the situation.

I—I sort of felt that I didn't know if he was asking me as what are you going to say because I—I don't know these answer to these questions, or he was asking me as I know the answer to these questions and what are you going to say. So, either way, for me, the answer was no and no.

Q. And that's just what I wanted to ask you—you did answer no to both of those, but—

A. Yes.

Q. —as you explained—you didn't mention this directly, but you mentioned in some of your earlier testimony about it, that this was kind of a wink and—you thought this might be a wink-and-nod conversation, where he really knew what was going on, but—

A. Well, I think that's what I just said.

Q. —he was testing you to see what you would say?

A. —that I wasn't—I—that was one of the—that was one of the things that went through my mind. I mean, it was not—I think that's what I just testified to, didn't I?

Q. You didn't use the term "wink-and-nod," though.

A. Oh.

Q. Did you have any conversation with Mr. Jordan during that meeting about the specifics of an affidavit?

A. No.

Q. Do you know if the subject of an affidavit even came up?

A. I don't think so.

Q. What happened next? Is that when he made the call to Mr. Carter, after this conversation?

A. No. He made the call to Mr.—I think—well, I think he made the call to Mr. Carter, uh, shortly after I came back into the room, but I could be wrong.

Q. And then the meeting concluded after that—after the appointment was set up with Mr. Carter, the meeting concluded?

A. Yes.

SENATOR DeWINE: Mr. Bryant, we're going to need to break sometime in the next 5 minutes. Is this a good time, or do you want to complete—

MR. BRYANT: This is a good time.

SENATOR DeWINE: Okay. We'll take a 5-minute break.

THE VIDEOGRAPHER: We're going off the record at 12:04 p.m.

[Recess.]

THE VIDEOGRAPHER: We are going back on the record at 12:16 p.m.

SENATOR DeWINE: We are back on the record.

Let me advise House Managers that they have consumed one hour and 54 minutes.

Mr. Bryant, you may proceed.

MR. BRYANT: Thank you, sir.

BY MR. BRYANT:

Q. Ms. Lewinsky, let me just cover a couple of quick points, and then I'll move on to another area, at least the next meeting with Mr. Jordan and eventual meeting with Mr. Carter.

Back when issues of—we were discussing the issues of cover stories, uh, would you tell me about the, uh, code name with Betty Currie, the President's secretary and how that worked in terms of the use—I guess the word "Kay," the name "Kay," and were there other code names, and when did this start?

A. Sure. First, let me say there's—from my experience with working with Independent Counsel on this subject area, there—my initial memory of things and then what I came to learn from, from other evidence, I think, are sort of two different things. So I initially hadn't remembered when that had happened or what had happened.

The name "Kay" was used because Betty and I first came to know each other and know—or, I guess I came to know of Mrs. Currie through Walter Kaye, who was a family friend, and I think that that—I don't remember when we started using it, but I know that by January at some point—by let's just say January, I think, 12th or 13th, we were doing that. So I know I was beyond paranoid at this point.

Q. Was "Kay" your code name, so to speak?

A. I believe—yes, yes. So she was "Kay" and I was "Kay."

Q. So any time, uh—not any time—so you used the "Kay" name interchangeably between the two—just between the two of you?

A. Just for paging messages.

Q. And, uh, when we're talking about that Ms. Currie would WAVE you into the White House, would that occur when the President was there? I mean, you went in—

A. There—there were times that I went to see Mrs. Currie when the President wasn't there.

Q. Right. And she would WAVE you in.

A. Correct.

Q. And there were times other people WAVE'd you in when the President wasn't there?

A. Correct.

Q. But when the President was there, and you were going to see the President, Ms. Currie was the one that always WAVE'd you in?

A. Yes, and I think, unless—maybe on the occasions of the radio address or it was an official function.

Q. Now, I think we talked a little bit about this. During your December the 19th meeting with Mr. Jordan, uh, he did schedule you a time to meet, uh, and introduce you to Mr. Carter?

A. Correct.

Q. And that—when was that meeting with Mr. Carter scheduled?

A. Uh, I believe for—it was Monday morning. I think it was 11 o'clock, around—sometime around that time.

Q. And my notes say that would have been December the 22nd, 1997.

A. Correct.

Q. Did you, uh, call to meet him earlier, and if so, why?

A. Yes. I had—I had had some concerns over the weekend that I didn't know if—if Mr. Jordan knew about the relationship or didn't know about the relationship. I was concerned about—I'm sure you can understand that I was dealing with a set of facts that were very different from what the President knew about being pulled into this case in that I had, in fact, disclosed information. So I was very paranoid, and, uh, I, uh, I—I was trying to—trying to see what Mr. Jordan knew was—was trying to inform him, was trying to just get a better grasp of what was going on. Is that—is that clear? No?

Q. You were—you were worried that Mr. Jordan didn't have a—did not have a grasp of what was really going on?

A. Correct.

Q. And that would be in terms of actually knowing the real relationship between you and the President?

A. Correct.

Q. So how did you attempt to correct that?

A. Well, I—I sort of—I think the way it came up was I said, uh—I think I said to Mr. Jordan—I know I've testified to this, uh, that—something about what about if someone overheard the phone calls that I had with him. And Mr. Jordan, I believe, said something like: So what? The President's allowed to call people.

And then—well.

Q. Now, was this at a meeting on December the 22nd, before you went to see Mr. Carter?

A. Correct.

Q. I assume you—you went to Mr. Jordan's office first, and then he was going to escort you over and turn you over to Mr. Carter?

A. Correct.

Q. And it was at that meeting that you brought up the possibility of someone overhearing a conversation with the President and you—between the two of you?

A. Yes.

Q. What else was said at that meeting with Mr. Jordan?

A. I think it covered a topic that I thought we weren't discussing here.

Q. Uh, okay. All right. I'm not sure.

A. Okay. Well, I—I know I've testified to this in my—I think in all three, if not both of my grand jury appearances, and I'm very happy to stand by that testimony.

Q. All right. I'm going to go around this a little bit without getting into details. You had a conversation with Mr. Jordan to detail—to give him more specific details of your relationship with the President.

A. Uh, to give him more details of some of the types of phone calls that we had.

Q. Okay. Uh, did you ask Mr. Jordan had he spoken with the President during that conversation?

A. Yes, I believe so.

Q. And why was this—why did you need to know that, or why was it important that you know that?

A. I wanted the President to know I'd been subpoenaed.

Q. Did, uh—in your, uh, proffer, you say that you made it clear to Mr. Jordan that you would deny the sexual relationship. Do you recall saying that in your proffer?

A. Uh, I know—I know that was written in my proffer.

Q. Okay. Well, I guess the better question is did you—did you in fact make that clear to Mr. Jordan that you would deny a sexual relationship with the President?

A. I—I'm not really sure. I—this is sort of an area that, uh, has been difficult for me. I think, as I might have discussed in the grand jury, that when I originally

wrote this proffer, it was to be a road map and, really, something to help me to get immunity and not necessarily—it's not perfect.

Uh, so, I think that was my intention—I know that was my intention of—or at least what I thought I was doing—but I never really thought that this would become the be-all and end-all, my proffer.

Q. Did, uh, did you bring with you to the meeting with Mr. Jordan, and for the purpose of carrying it, I guess, to Mr. Carter, items in response to this request for production?

A. Yes.

Q. Did you discuss those items with Mr. Jordan?

A. I think I showed them to him, but I'm not 100 percent sure. If I've testified that I did, then I'd stand by that.

Q. Okay. How did you select those items?

A. Uh, actually, kind of in an obnoxious way, I guess. I—I felt that it was important to take the stand with Mr. Carter and then, I guess, to the Jones people that this was ridiculous, that they were—they were looking at the wrong person to be involved in this. And, in fact, that was true. I know and knew nothing of sexual harassment. So I think I brought the, uh, Christmas cards, that I'm sure everyone in this room has probably gotten from the President and First Lady, and considered that correspondence, and some innocuous pictures and—they were innocuous.

Q. Were they the kind of items that typically, an intern would receive or, like you said, any one of us might receive?

A. I think so.

Q. In other words, it wouldn't give away any kind of special relationship?

A. Exactly.

Q. And was that your intent?

A. Yes.

Q. Did you discuss how you selected those items with anybody?

A. I don't believe so.

Q. Did Mr. Jordan make any comment about those items?

A. No.

Q. Were any of these items eventually turned over to Mr. Carter?

A. Yes.

Q. And did you tell Mr. Jordan at that meeting that morning that these were not all of the gifts?

A. I think I—I know I sort of alluded to that in my proffer, and I don't, uh—it's possible. I don't have a specific recollection of that.

Q. And do you have a recollection of any response he may have made if you said that?

A. No.

Q. That—did you tell Mr. Jordan that day that the, uh, President gave you a hatpin and that the hatpin was mentioned in the subpoena?

A. No.

Q. Did you discuss the hatpin with Mr. Jordan?

A. On the 22nd?

Q. Yes.

A. No.

Q. Any other time?

A. Yes.

Q. When was that?

A. On the 19th.

Q. Okay, and what was—I think I may have missed that, going through that. Tell me about it.

A. Actually, I think we—we went through it.

Q. You just maybe mentioned it.

A. I mentioned it when I first mentioned to him the subpoena that the hatpin had concerned me.

Q. What was the significance of that hatpin to you? That seems to stand out. Was that—was that a—

A. Right. I think, as I mentioned before, it was an alarm to me because it was a specific item—

Q. Right.

A. —in this list of generalities—I don't know generalities, but of general things—you sort of go—hatpin?

Q. Right. I recall that, but I—I think my question was, was it of any special significance to you.

A. Sure.

Q. Was it, like, the first gift or something, that it really stood out above the others?

A. Yes. It—it was—it was the first gift he gave me. It was a thoughtful gift. It was beautiful.

Q. And was the hatpin in that list, that group of items that you carried to surrender to Mr. Carter?

A. No.

Q. And the hatpin was not in that list of items that you showed Mr. Jordan?

A. I—I didn't show Mr. Jordan a list of items.

Q. No—I thought you said you showed him the items.

A. Correct.

Q. And the hatpin was not in that group—I may have "list"—

A. Oh.

Q. —but the hatpin was not in that group of items—

A. No, it was not.

Q. —that you showed Mr. Jordan. Okay.

Tell us, if you would, how you arrived at Mr. Carter's. I know you rode in a car, but Mr. Jordan was with you—

A. Yes.

Q. —you went in—and tell us what happened.

A. Uh, in the car, we spoke about job things. I know he mentioned something about, I think, getting in touch with Howard Pastor, and I mentioned to Mr. Jordan that Mr. Bacon knew Mr. Pastor and had already gotten in touch with him, and so he should—I just wanted Mr. Jordan to be aware of that.

Uh, we talked about—it was really all about the job stuff because Mr. Jordan—the man driving the car—I didn't want to discuss anything with the case.

Q. But once you arrived and Mr. Jordan made the introduction—

A. Correct.

Q. —between the two of you. And did he explain to Mr. Carter your situation, or did he go beyond just the perfunctory introduction?

A. No.

Q. Did he leave?

A. Yes.

Q. Did you, uh—I guess—generally, what did you discuss with Mr. Carter?

A. The same vanilla story I had kind of—well, actually, not even that. I discussed with Mr. Carter the—uh, that this was ridiculous, that I was angry, I didn't want to be involved with this, I didn't want to be associated with Paula Jones, with this case.

Q. Did you, uh—

A. I asked if I could sue Paula Jones. [Laughing.]

Q. Did you discuss an affidavit?

A. Yes, I believe I mentioned an affidavit.

Q. Did you mention, uh, the, uh—well, was there discussion about how you could sign an affidavit that might be—allow you to skirt being called as a witness?

A. Mr. Carter said that was a possibility but that there were other things that we should try first; that he, uh, thought—well, actually, can I ask my attorneys a question for a moment?

MR. BRYANT: Uh, sure.

[Witness conferring with counsel.]

SENATOR DeWINE: Counsel, Ms. Lewinsky's mike is carrying; it's picking up, so we don't want to—

THE WITNESS: Sorry. I was only saying nice things about you all.

SENATOR DeWINE: Thank you.

[Laughter.]

MR. CACHERIS: So that you'll know what we're discussing here, as you know, Ms. Lewinsky is not required to give up her lawyer-client privileges, and the question we don't know the answer to and would like to address after lunch is whether in fact Mr. Carter has testified to this conversation.

Therefore, perhaps—

SENATOR DeWINE: All right. Maybe counsel at this point could—could you rephrase—rephrase the question or ask another question, and after lunch, we can come back—

MR. CACHERIS: Or come back.

SENATOR DeWINE: Well, I don't want—I don't think he has to move off the general area if he can—I'll leave that up to counsel.

MR. BRYANT: There may be some misunderstanding or—

SENATOR DeWINE: Why don't you rephrase the question and we'll see where we are.

MR. BRYANT: —on this issue of—well, on this issue of the attorney-client privilege, it is our understanding that she is able to testify. But again, I don't know, uh, if we're going to resolve that right now.

SENATOR DeWINE: Why don't we try to resolve that issue over lunch and—

MR. BRYANT: Because I do have other questions that would relate to this area.

SENATOR DeWINE: —you can stay in this general area.

MR. BRYANT: Well, I'm not sure I can stay in this area too far without other questions that might arguably be involved in that privilege. I can ask them and you can object if you think they're within that range.

MR. CACHERIS: Well, as I said, it's our understanding that under her agreement with the Independent Counsel, she has not been required to waive her lawyer-client privilege, and we don't want to do so here. That's that simple. And, Mr. Bryant, I want to check to see if Mr. Carter has testified about this. If he has, then we might be objecting—

MR. BRYANT: Well, she has already, I think, waived that privilege through talking with the FBI and those folks. I mean, we have statements that concern those conversations—

SENATOR DeWINE: Well, let's, instead of—

MR. BRYANT: —and the 302's.

SENATOR DeWINE: Counsel, let me just—if I could interrupt both of you, to keep moving here. Mr. Bryant, you have a choice. You can continue on this line of questioning, and we will have to deal with that, or you can move off of it, and in 20 minutes we'll be at a lunch break and then we can try to resolve that.

MR. BRYANT: To be clear and fair, let's just—let me postpone the rest of this—

SENATOR DeWINE: That will be fine.

MR. BRYANT: —exam, and we'll move over to December 28th, and we'll come back if it's appropriate.

SENATOR DeWINE: That will be fine.

THE WITNESS: I'm sorry. I'm not trying to be difficult. I'm sorry.

MR. BRYANT: No. That's a valid concern; it really is.

Let's talk a minute—I just don't want to forget to do this; unless I make notes, I forget.

SENATOR LEAHY: You've got enough people here making notes; I don't think it'll be—I don't think it'll be forgotten.

BY MR. BRYANT:

Q. We're going to move in the direction of the December 28th, 1997 meeting, and I'm going to ask you, at some point did you meet with the President later in December?

A. Yes.

Q. Okay, and what date was that?

A. December 28th, 1997.

Q. Thank you. How did the meeting come about?

A. Uh, I contacted Mrs. Currie after Christmas and asked her to find out if the President still wanted to give me his Christmas present, or my Christmas present.

Q. Did Ms. Currie get back to you?

A. Yes, she did.

Q. And what was her response?

A. To come to the White House at 8:30 a.m. on the 28th.

Q. And that would have been Sunday?

A. Yes.

Q. Did you in fact go to the White House on that date?

A. Yes.

Q. And how did you get in?

A. I believe the Southwest Gate.

Q. Did Ms. Currie WAVE you in?

A. I think so.

Q. You've testified to that previously.

A. Okay, then I accept that.

Q. This, uh, meeting on the 28th was a Sunday, and Ms. Currie—again, according to your prior testimony—WAVE'd you in. This was all consistent with what the President had told you to do about, number one, coming on weekends; is that correct?

A. I—I—I don't think me coming in on that Sunday had—I mean, for me, my memory of it was that it was a holiday time, so it could have been any day. It's pretty quiet around the White House from Christmas to New Year's.

Q. And it would have been consistent with her WAVEing you in when she was there at work on Sunday?

A. Yes.

Q. That was unusual, though, for her to be in on Sunday, wasn't it?

A. I—I—I—I think so, but I mean, that's her—I think that's something you'd have to ask her.

MR. BRYANT: I'm concerned about the time. I'm going to go ahead and continue with this, and we'll just stop wherever we have a—whenever you tell us to stop. This will take a little bit longer than another 15 minutes or so; but it's appropriate, I think, for us to continue.

SENATOR DeWINE: Well, frankly, it's up to you.

MR. BRYANT: Okay.

SENATOR DeWINE: Do you have a problem in breaking it?

MR. BRYANT: No; no, I don't think so.

SENATOR DeWINE: I mean, if you do, we can take lunch now. I'll leave that up to you.

MR. BRYANT: Uh, why don't we take the lunch now—

SENATOR DeWINE: All right. No one has any objection to that, we will do that.

THE WITNESS: I never object to food.

SENATOR DeWINE: Let me just announce to counsel you have used 2 hours and 14 minutes. It is now 20 minutes until 1. We'll come back here at 20 minutes until 2. And we need during this break also to see counsel and try to resolve the other issue prior to going back in. This is the privilege issue.

SENATOR LEAHY: Did counsel for Ms. Lewinsky have to make a couple phone calls first, before we have that discussion? I think—

SENATOR DeWINE: My suggestion would be we do that at the last 15 minutes of the break.

SENATOR LEAHY: I think he said he wanted to call Mr. Carter; that's why—

MR. CACHERIS: Meet you back up here?

SENATOR DeWINE: Yes. I would also—the sergeant-at-arms has asked me to announce that the food is on this floor, and since we have a very limited period of time, we suggest you try to stay on the floor.

MS. HOFFMANN: We were planning to go back—

SENATOR DeWINE: Except—I understand. I know that you're—

MR. CACHERIS: We have our own arrangements.

SENATOR DeWINE: I know that you have your room, and you've made your own arrangements, and that's fine.

So we will start back in one hour.

THE VIDEOGRAPHER: We are going off the record at 12:39 p.m.

[Whereupon, at 12:39 p.m., the deposition was recessed, to reconvene at 1:39 p.m. this same day.]

AFTERNOON SESSION

THE VIDEOGRAPHER: We are going back on the record at 13:43 hours.

SENATOR DeWINE: We are now back on the record.

As we broke for lunch, there was an objection that had been made by Ms. Lewinsky's counsel. Let me call on them at this point for statements.

MR. CACHERIS: Yes. We have examined the record during the course of the break, and while we know that the immunity agreement does provide for Ms. Lewinsky to maintain her lawyer-client privilege, we think in this instance, the

matter has been testified so fully that it has been waived. So the objection that we lodged is withdrawn.

SENATOR DeWINE: Thank you very much.

Mr. Bryant, you may proceed.

MR. BRYANT: Thank you, Mr. Senator.

BY MR. BRYANT:

Q. We've got you to the point where Mr. Jordan has escorted you to Mr. Carter's office and has departed, and you and Mr. Carter have conversations.

Generally, what did you discuss with Mr. Carter?

A. I guess the—the reasons why I didn't think I should be called in this matter.

Q. Did he ask you questions?

A. Yes.

Q. What type of questions did he ask you?

A. Um, they ranged from where I lived and where I was working to did I have a relationship with the President, did—everything in between.

Q. When he—when he asked you about the relationship, did you understand he meant a sexual-type relationship?

A. He asked me questions that—that indicated he was being specific.

Q. And did—did you deny such a relationship?

A. Yes, I did.

Q. Did he ask you questions about if you were ever alone with the President?

A. Yes, he did.

Q. And did you deny that?

A. I think I mentioned that I might have brought the President papers on occasion, may have had an occasion to be alone with him, but not—not anything I considered significant.

Q. But that was not true either, was it?

A. No.

Q. And in fact, that—the fact that you brought him papers, that was part of the cover-up story?

A. Correct.

Q. I'm unclear on a point I want to ask you. Also, did Mr. Carter ask you about how you perhaps were pulled into this case, and you gave some answer about knowing Betty Currie and—and Mr. Kaye? Does that ring bells? You gave that testimony in your deposition.

A. That that's how I got pulled into the case?

Q. Right. Did—

A. May I see that, please?

Q. It's about your denying the relationship with the President, and you think maybe you got pulled into the case. It's—certainly, it's—it's in your grand jury—okay. It's—it's in the August 1 interview, page 9. This was a 302 exam from the FBI.

A. Um—

MR. BRYANT: Let me give that to her. Let me just give it to her to refresh her memory. I'm not going to put it in evidence, although it's—it should be there.

[Handing document.]

[Witness perusing document.]

THE WITNESS: I don't think that's an accurate representation of what I might have said in this interview.

BY MR. BRYANT:

Q. Okay. Would you—how would you have related Walter Kaye in that interview? How would his name have come up?

A. In this interview or with Mr. Carter?

Q. Well, in the interview with Mr. Carter that I assume was sort of summarized in that—

A. Right.

Q. —302, but, yes, with Mr. Carter.

A. Uh, I think I mentioned that I was friendly with Betty Currie, the President's secretary.

Q. And how would Mr. Kaye's name have come up in the conversation?

A. Because of how I met Ms. Currie was through—that's how I came to know of Ms. Currie and—and first introduced myself to her. Excuse me.

Q. Let's go back now and resume where we were before the lunch break. We were talking about the December visit to the White House and the conversation with the President. You had discussed—well, I think we're to the point where perhaps you—or I'll ask you to bring up your discussion with the President about the subpoena and the request for production.

A. Um, part way into my meeting with the President, I brought up the concern I had as to how I would have been put—how I might have been alerted or—not alerted, but how I was put on the witness list and how I might have been alerted to the Paula Jones attorneys, and that that was—I was sort of concerned about that. So I discussed that a little, and then I said, um, that I was concerned about the hatpin. And to the best of my memory, he said that that had concerned him as well, and—

Q. Could he have said that bothered him?

A. He—he could have. I—I mean, I don't—I know that sometimes in the—in my grand jury testimony, they've put quotations around things when I'm attributing statements to other people, and I didn't necessarily mean that those were direct quotes. That was the gist of what I remembered him saying. So, concern, bothered, it doesn't—

Q. Was—was there a discussion at that point as to how someone might have—may have discovered the—the hatpin and why?

A. Well, he asked me if I had told anybody about it, and I said no.

Q. But the two of you reached no conclusion as to how that hatpin came—

A. No.

Q. —to appear on the motion?

A. No.

Q. Did he appear at all, I think, probably surprised that—that you had received a request for production of documents or the—the hatpin was on that document?

A. I didn't discuss—we didn't discuss documents, request for documents, but with regard to the hatpin, um, I don't remember him being surprised.

Q. Mm-hmm. How long did the discussion last about the—this request for production of—of the items?

A. The topic of the Paula Jones case, maybe 5 minutes. Not very much.

Q. What else was said about that?

A. About the case?

Q. Yes.

A. There was—then, at some point in this discussion—I think it was after the hatpin stuff—I had said to him that I was concerned about the gifts and maybe I should put them away or possibly give them to Betty, and as I've testified numerously, his response was either ranging from no response to "I don't know" or "let me think about it."

Q. Did the conversation about the—the gifts that you just mentioned, did that immediately follow and tie into, if you will, the conversation about the request for production of items, the hatpin and so forth? Did one lead to the other?

A. I don't remember. I know the gift conversation was subsequent to the hatpin comment, but I—I don't remember if one led to the other.

Q. What else happened after that?

A. Hmm, I think we went back to sort of—we left that topic, kind of went back to the visit.

Q. Did—which included exchanging the Christmas gifts?

A. Correct.

Q. Okay.

A. I had already—he had already given me my presents at this point.

Q. Okay. Did—he gave you some gifts that day, and my question to you is what went through your mind when he did that, when you knew all along that you had just received a subpoena to produce gifts. Did that not concern you?

A. No, it didn't. I was happy to get them.

Q. All right. Why did it—beyond your happiness in receiving them, why did the subpoena aspect of it not concern you?

A. I think at that moment—I mean, you asked me when he gave me those gifts. So, at that moment, when I was there, I was happy to be with him. I was happy to get these Christmas presents. So I was nervous about the case, but I had made a decision that I wasn't going to get into it too much—

Q. Well—

A. —with a discussion.

Q. —have you in regards to that—you've testified in the past that from everything that the President had told you about things like this, there was never any question that you were going to keep everything quiet, and turning over all the gifts would prompt the Jones attorneys to question you. So you had no doubt in your mind, did you not, that you weren't going to turn these gifts over that he had just given you?

A. Uh, I—I think the latter half of your statement is correct. I don't know if you're reading from my direct testimony, but—because you said—your first statement was from everything the President had told you. So I don't know if that was—if those were my words or not, but I—no, I was—I—it—I was concerned about the gifts. I was worried someone might break into my house or concerned that they actually existed, but I wasn't concerned about turning them over because I knew I wasn't going to, for the reason that you stated.

Q. But the pattern that you had had with the President to conceal this relationship, it was never a question that, for instance, that given day that he gave you gifts that you were not going to surrender those to the Jones attorneys because that would—

A. In my mind, there was never a question, no.

Q. I'm just actually looking at your deposition on page—no, I'm sorry—your grand jury proceedings of August the 6th, just to be clear, since you raised that question.

1004 in the book, appendices.

You indicate that in response to a question, "What do you think the President is thinking when he is giving you gifts when there is a subpoena covering gifts. I mean, does he think in any way, shape or form that you're going to be turning these gifts over?" And your answer is, "You know, I can't answer what he was thinking, but, to me, it was—there was never a question in my mind, and I—from everything he said to me, I never questioned him that we were ever going to do anything but keep this private. So that meant deny it, and that meant do whatever appropriate—take whatever appropriate steps needed to be taken, you know, for that to happen, meaning that if—if I had to turn over every gift—if I had turned over every gift he had given me—first of all, the point of the affidavit and the point of everything was to try to avoid a deposition. So where I'd have to sort of—you know, I wouldn't have to lie as much as I would necessarily in an affidavit how I saw it," and you continue on, just one short paragraph.

A. Right.

Q. "So, by turning over all of these gifts, it would at best prompt him to want to question me about what kind of friendship I had with the President, and they would want to speculate and they'd leak it, and my name would be trashed and he would be in trouble."

So you recall giving that testimony?

A. Yes. I accept—I accept what's said here.

Q. Okay.

A. It's a little different from what you said, but very close.

Q. Thank you.

Did the President ever tell you to turn over the gifts?

A. Not that I remember.

Q. Now, is that—does that bring us to the end of this conversation with the President, or did other things occur?

A. I think that the aspect of where this case is related, yes.

Q. Okay. And then you left, and where did you go when you left the White House?

A. I think I went home.

Q. This is at—at your apartment?

A. My mother's apartment.

Q. Mother's apartment.

Did you later that day receive a call from Betty Currie?

A. Yes, I did.

Q. Tell us about that.

A. I received a call from—from Betty, and to the best of my memory, she said something like I understand you have something for me or I know—I know I've testified to saying that—that I remember her saying either I know you have something for me or the President said you have something for me. And to me, it's a—she said—I mean, this is not a direct quote, but the gist of the conversation was that she was going to go visit her mom in the hospital and she'd stop by and get whatever it was.

Q. Did you question Ms. Currie or ask her, what are you talking about or what do you mean?

A. No.

Q. Why didn't you?

A. Because I assumed that it meant the gifts.

Q. Did—did you have other telephone calls with her that day?

A. Yes.

Q. Okay. What was the purpose of those conversations?

A. I believe I spoke with her a little later to find out when she was coming, and I think that I might have spoken with her again when she was either leaving her house or outside or right there, to let me know to come out.

Q. Do—at that time, did you have the caller identification—

A. Yes, I did.

Q. —on your telephone?

A. Yes.

Q. And did you at least on one occasion see her cell phone number on your caller-ID that day?

A. Yes, I did.

Q. Now, Ms. Currie has given different versions of what happened there, but I recall one that she mentioned about Michael Isikoff, that you had called her and said Michael Isikoff is calling around or called me—

A. Mm-hmm.

Q. —about some gifts.

Did Mr. Isikoff ever call you about the gifts?

A. No.

Q. Okay. Would there have been—would there have been any reason for you not to have carried the gifts to Ms. Currie had you wanted her—had you called her, would you have had her come over to get them from you, or does that—

A. Probably not.

Q. I mean, is there—is there any doubt in your mind that she called you to come pick up the gifts?

A. I don't think there is any doubt in my mind.

Q. Okay. Let me ask was—I think you did something special for her, as I recall, too, or her mother. Did you prepare a plant or something for her to pick up?

A. Um, no. I just—

Q. To take to her mother?

A. I bought a small plant and a balloon.

Q. Okay. What was your understanding about her mother, and was—

A. Oh, I—I knew her mom was in—was in the hospital and was sick, and I think this was her second trip to the hospital in several months, and it had been a tough year.

Q. And was she—was Mrs. Currie coming by your place on her way to visit her mother in the hospital? Do you know that?

A. That's what I remember her saying.

Q. So you prepared—and you bought a gift for her mother?

A. Correct.

Q. Okay. Do you know what kind of time frame this covered? First of all, it was the same day, December the 28th, 1997?

A. Seven, yes.

Q. Do you know what kind of time frame it covered?

A. I think it was afternoon. I know I've testified to around 2 o'clock.

Q. Could it have been later?

A. Sure.

Q. So, when Betty Currie came, what—what did you have prepared for her?

A. I had a box from the Gap with some of the presents the President had given me, taped up in it.

Q. What happened when she arrived?

A. Uh, I think I walked out to the car and asked her to hold onto this, and I think we talked about her mom for a few minutes. Um—

Q. Did she call you right before she arrived, or did you just go wait for her in the building?

A. I think she called me right before she—at some point, I think, before she—either when she was leaving or she was outside.

Q. Do you know—did you have any indication from Ms. Currie what she was going to do with that box of gifts?

A. Um, I know I've testified to this. I don't—I don't remember. I think maybe she said something about putting it in a closet, but whatever I—I stand by whatever I've said in my testimony about it.

Q. But she was supposed to keep these for you?

A. Well, I had asked her to.

Q. Okay. Did Ms. Currie ask you at any time about what was in the box?

A. No, or not that I recall, I guess I should say.

Q. What was the—in your mind, what was the purpose of having Ms. Currie retain these gifts as opposed to another friend of yours?

A. Hmm, I know I've testified to this, and I can't—can I look at my grand jury—I mean, I don't really remember sitting here right now, but if I could look at my grand jury testimony, I—or I'd just stand by it.

Q. We will pass that to you.

A. Okay. Thank you.

[Witness handed documents.]

BY MR. BRYANT:

Q. The answer I'm looking for is—if this refreshes your recollection is that turning these over was a reassurance to the President that everything was okay. Is that—

A. Can I read it in context, please?

Q. Sure, sure.

A. Thank you.

[Witness perusing document.]

THE WITNESS: I—I—I stand by this testimony. I mean, I'd just note that it—what I'm saying here about giving it to the President or the assurance to the President is how I saw it at that point, not necessarily how I felt then. So I think you asked me what—why I didn't at that point, and I'm just—that's what's a little more clear there, just to be precise. I'm sorry.

BY MR. BRYANT:

Q. Okay. Did you have any later conversations with either Ms. Currie or the President about these gifts in the box?

A. No.

Q. Let me direct your attention to your meeting with Vernon Jordan on December the 31st of 1997. Was that to go back and talk about the job again?

A. Little bit, but the—the—for me, the point of that meeting was I had gotten to a point where Linda Tripp wasn't returning my phone calls, and so I felt that I needed to devise some way, that somehow—to kind of cushion the shock of what would happen if Linda Tripp testified all the facts about my relationship, since I had never disclosed that to the President. So that was sort of my intention in meeting with Mr. Jordan, was hoping that I could give a little information and that would get passed on.

Q. This was at a meeting for breakfast at the Park Hyatt Hotel?

A. Yes.

Q. Were just the two of you present?

A. Yes.

Q. Did you discuss other things, other than Linda Tripp and your job search?

A. I think we talked about what each of us were doing New Year's Eve.

Q. Specifically about some notes that you had at your apartment?

A. Oh, yes. I'm sorry.

Um, well, I mean, that really was in relation to discussing Linda Tripp. So—

Q. And the Jones lawyers, too. Was that right?

A. Um, I—I don't know that I discussed the Jones lawyers. If I've testified that I discussed the Jones lawyers, then I did, but—

Q. Okay. Well, tell us about the notes.

A. Well, the—sort of the—I don't know what to call it, but the story that I gave to Mr. Jordan was that I was trying to sort of alert to him that, gee, maybe Linda Tripp might be saying these things about me having a relationship with the President, and right now, I'm explaining this to you. These aren't the words that I used or how I said it to him, and that, you know, maybe she had seen drafts of notes, trying to obviously give an excuse as to how Linda Tripp could possibly know about

my relationship with the President without me having been the one to have told her. So that's what I said to him.

Q. And what was his response?

A. I think it was something like go home and make sure—oh, something about a—I think he asked me if they were notes from the President to me, and I said no. I know I've testified to this. I stand by that testimony, and I'm just recalling it, that I said no, they were draft notes or notes that I sent to the President, and then I believe he said something like, well, go home and make sure they're not there.

Q. And what did you do when you went home?

A. I went home and I searched through some of my papers, and—and the drafts of notes I found, I sort of—I got rid of some of the notes that day.

Q. So you threw them away?

A. Mm-hmm.

THE REPORTER: Is that a "yes"?

THE WITNESS: Yes. Sorry.

BY MR. BRYANT:

Q. On your way home, you were with Mr. Jordan? I mean, he carried—did he carry you someplace or take you home, drop you off?

A. Yes, he dropped me off.

Q. Okay. On the way home—

A. It wasn't on the way to my home, but—

Q. Okay. Did he—did you tell him that you had had an affair with the President?

A. Yes.

Q. What was his response?

A. No response.

Q. When was the next time—well, let me direct your attention to Monday, January the 5th, 1998. You had an occasion to meet with your lawyer, Mr. Carter, about your case, possible depositions, and so forth.

Did you have some concern at that point about those depositions and how you might answer questions in the Paula Jones case?

A. Yes.

Q. Did you reach any sort of determination or resolution of those concerns by talking to Mr. Carter?

A. No.

Q. What's the status of the affidavit at this point? Is there one?

A. No.

Q. Do you recall any other concerns or questions that either you or Mr. Carter may have presented to each other during that meeting?

A. I think I—I think it was in that meeting I brought up the notion of having my family present, if I had to do a deposition, and he went through what—I believe we discussed—at this point, I think I probably knew at this point I was going to sign an affidavit, but it wasn't created yet, and I believe we discussed what—if the affidavit wasn't, I guess, successful—I don't know how you'd say legally—say that legally—but what a deposition would be like, sitting at a table.

Q. I'll bet he never told you it would be like this, did he?

A. No.

Q. Did you try to contact the President after you left the meeting with Mr. Carter?

A. Yes.

Q. And you reached Betty Currie?

A. Yes.

Q. And you told her to pass along to the President that you wanted—it was important to talk with him?

A. Yes.

Q. You may have mentioned to her something about signing something?

A. Right; I might have.

Q. What response did you get from that telephone call?

A. Uh, Betty called me back, maybe an hour or two later, and put the President through.

Q. And what was that conversation?

A. I know I've testified to this, and it was sort of two-fold. On the one hand, I was, uh, upset, so I was sort of in a pissy mood and a little bit contentious. Uh, but more related to the case, uh, I had concerns that from questions Mr. Carter had

asked me about how I got my job at the Pentagon and transferred and, and, uh, I was concerned as to how to answer those questions because those questions involved naming other people who I thought didn't like me at the White House, and I was worried that those people might try and—just to get me in trouble because they didn't like me—so that if they were then—I mean, I had no concept of what exactly happens in these legal proceedings, and I thought, well, maybe if I say Joe Schmo helped me get my job, then they'd go interview Joe Schmo, and so, if Joe Schmo said, "No, that's not true," because he didn't like me, then I didn't want to get in trouble. So—

Q. Did there appear to be a question possibly about how you—how you got the job at the Pentagon? Did you fear for some questions there?

A. Yes. I think I tend to be sort of a detail-oriented person, and so I think it was, uh, my focusing on the details and thinking everything had to be a very detailed answer and not being able to kind of step back and look at how I could say it more generally. So that's what concerned me.

Q. Mm-hmm. This—

A. Because clearly, I mean, I would have had to say, "Gee, I was transferred from the Pentagon because I had this relationship that I'm not telling you about with the President." So there was—there was that concern for me there.

Q. And what did the President tell you that you could say instead of saying something like that?

A. That the people in Legislative Affairs helped me get the job—and that was true.

Q. Okay, but it was also true, to be complete, that they moved you out into the Pentagon because of the relationship with the President?

A. Right.

Q. Did—did the subject of the affidavit come up with the President?

A. Yes, towards the end of the conversation.

Q. And how did—tell us how that occurred.

A. I believe I asked him if he wanted to see a copy of it, and he said no.

Q. Well, I mean, how did you introduce that into the subject—into the conversation?

A. I don't really remember.

Q. Did he ask you, well, how's the affidavit coming or—

A. No, I don't think so.

Q. But you told him that you had one being prepared, or something?

A. I think I said—I think I said, you know, I'm going to sign an affidavit, or something like that.

Q. Did he ask you what are you going to say?

A. No.

Q. And this is the time when he said something about 15 other affidavits?

A. Correct.

Q. And tell us as best as you can recall what—how that—how that part of the conversation went.

A. I think that was the—sort of the other half of his sentence as, No, you know, I don't want to see it. I don't need to—or, I've seen 15 others.

It was a little flippant.

Q. In his answer to this proceeding in the Senate, he has indicated that he thought he had—might have had a way that he could have you—get you to file a—basically a true affidavit, but yet still skirt these issues enough that you wouldn't be called as a witness.

Did he offer you any of these suggestions at this time?

A. He didn't discuss the content of my affidavit with me at all, ever.

Q. But, I mean, he didn't make an offer that, you know, here's what you can do, or let me send you over something that can maybe keep you from committing perjury?

A. No. We never discussed perjury.

Q. On—well, how did that conversation end? Did you talk about anything else?

A. I said goodbye very abruptly.

Q. The next day—well, on January the 6th—I'm not sure exactly what day we are—1998, did you pick up a draft of the affidavit from Mr. Carter?

A. Yes, I did.

Q. What did you do with that draft?

A. I read it and went through it.

Q. How did it look?

A. I don't really remember my reaction to it. I know I had some changes. I know there's a copy of this draft affidavit that's part of the record, but—

Q. Were portions of it false?

A. Incomplete and misleading.

Q. Did you take that affidavit to Mr. Jordan?

A. I dropped off a copy in his office.

Q. Did you have any conversation with him at that point or some later point about that affidavit?

A. Yes, I did.

Q. And tell us about that.

A. I had gone through and had, I think, as it's marked—can I maybe see? Isn't there a copy of the draft?

[Witness handed document.]

[Witness perusing document.]

The WITNESS: Thank you.

SENATOR DeWINE: Mr. Bryant, can you reference for the record at this point?

MR. BRYANT: Okay.

SENATOR DeWINE: If you can.

MR. BRYANT: It would be—

MR. SCHIPPERS: 1229.

SENATOR DeWINE: 1229?

MR. SCHIPPERS: Yes.

SENATOR DeWINE: All right. Thank you.

BY MR. BRYANT:

Q. Okay. Have you had an opportunity to review the draft of your affidavit?

A. I—yes.

Q. Okay. What—do you have any comment or response?

A. I received it. I made the suggested changes, and I believe I spoke with Mr. Jordan about the changes I wanted to make.

Q. Did he have any comment on your proposed changes?

A. I think he said the part about Lewis & Clark College was irrelevant. I'd have to see the—I don't believe it's in the final copy in the affidavit, so—but I could be mistaken.

Q. At this point, of course, you had a lawyer, Mr. Carter, who was representing your interest. Mr. Jordan was—I'm not sure if he—how you would characterize him, but would it—would it be that you view Mr. Jordan as, in many ways, Mr.—the President—if Mr. Jordan knew it, the President knew it, or something of that nature?

A. I think I testified to something similar to that. I felt that, I guess, that Mr. Jordan might have had the President's best interest at heart and my best interest at heart, so that that was sort of maybe a—some sort of a blessing.

Q. I think, to some extent, what you—what you had said was getting Mr. Jordan's approval was basically the same thing as getting the President's approval. Would you agree with that?

A. Yeah. I believe that—yes, I believe that's how I testified to it.

Q. The fact that you assume that Mr. Jordan was in contact with the President—and I believe the evidence would support that through his own testimony that he had talked to the President about the signed affidavit and that he had kept the President updated on the subpoena issue and the job search—

A. Sir, I'm not sure that I knew he was having contact with the President about this. I—I think what I said was that I felt that it was getting his approval. It didn't necessarily mean that I felt he was going to get a direct approval from the President.

I'm sorry to interrupt you.

Q. Oh, that's fine. At any time you need to clarify a point, please—please feel free to do so.

Did—did—did you have any indication from Mr. Jordan that he—when he discussed the signed affidavit with the President, they were discussing some of the contents of the affidavit? Did you have—

A. Before I signed it or—

Q. No; during the drafting stage.

A. No, absolutely not—either/or. I didn't. No, I did not.

Q. Now, the changes that you had proposed, did Mr. Jordan agree to those changes?

A. I believe so.

Q. And then you somehow reported those changes back to Mr. Carter or to someone else?

A. No. I believe I spoke with Mr. Carter the next morning, before I went in to see him, and that's when I—I believe that's—I dictated the changes.

Q. Okay. Mr. Jordan did not relay the changes to Mr. Carter—you did?

A. I know I relayed the changes, these changes to Mr. Carter.

Q. Specifically, the concerns that you had about—about the draft, what did they include, the changes?

A. I think one of the—I think what concerned me—and I believe I've testified to this—was—was in Number 6. Even just mentioning that I might have been alone with the President, I was concerned that that would give the Jones people enough ammunition to want to talk to me, to think, oh, well, maybe if she was alone with him that—that he propositioned me or something like that, because I hadn't—of course, I mean, you remember that at this point, I had no idea the amount of knowledge they had about the relationship. So—

Q. Did—Mr. Carter, I assume, made those changes, and then you subsequently signed the affidavit?

A. We worked on it in his office, and then, yes, I signed the affidavit.

Q. Is this the same day—

A. Yes.

Q. —at this point?

A. This was the 7th?

Q. Yes.

A. Correct.

Q. Did—did you take the signed—or a copy of the signed affidavit, I should say—did you take a copy—did you keep a copy?

A. Yes, I did.

Q. Did you give it to anyone or give anyone else a copy?

A. No.

Q. Now, did you, the next day on the 8th, go to New York for some interviews for jobs?

A. It was—it—I either went later on the 7th or on the 8th, but around that time, yes.

Q. Was this a place that you had already interviewed?

A. Yes.

Q. And I assume this was at McAndrews and Forbes?

A. Yes.

Q. How did you feel that the interview went?

A. I—I know I characterized it in my grand jury testimony as having not gone very well.

Q. Okay. I think you also mentioned it went very poorly, too. Does that sound—does that ring a bell?

A. Sure.

Q. Why? Why would you so characterize it?

A. Well, as I've had a lot of people tell me, I'm a pessimist, but also I—I wasn't prepared. I was in a waiting room downstairs at McAndrews and Forbes, and—or at least, I thought it was a waiting room—and Mr. Durnan walked into the room unannounced, and the interview began. So I felt that I started on the wrong foot, and I just didn't feel that I was as articulate as I could have been.

Q. Did you call Mr. Jordan after that?

A. Yes, I did.

Q. Did you express those same concerns?

A. Yes, I did.

Q. What did he say?

A. And this is a little fuzzy for me. I know that I had a few phone calls with him in that day. I think in this call, he said, you know, "Don't worry about it." I—my testimony is probably more complete on this. I'm sorry.

Q. What—what other phone calls did you have with him that day?

A. I remember talking to—I know that at some point, he said something about that he'd call the chairman, and then I think he said just at some point not to worry. He was always telling me not to worry because I always—I overreact a little bit.

Q. All total, how many calls did you have with him that day—your best guess?

A. I have no idea.

Q. More than two?

A. I—I don't know.

Q. Can you think of any other subjects the two of you would have talked about?

A. I don't think so.

Q. Did he, Mr. Jordan, tell you that he had talked to the chairman, or Mr. Perelman, whatever his title is?

A. I'm sorry. I know I've testified to this. I don't—I think so.

Q. And you had—did you have additional interviews at this company or a subsidiary?

A. Yes, I—well, I had with the sort of, I guess, daughter—daughter company, Revlon. I had an interview with Revlon the next day.

Q. And you were offered a job?

A. Yes, I was.

Q. About the 9th or so? That would have been 2 days after the affidavit?

A. Oh. Actually, no. I think I was offered a position, whatever that Friday was. Oh, yes, the 9th. I'm sorry. You're right.

Oh, wait. It was either the 9th or the 13th—or the 12th—the 9th or the 12th.

Q. Okay. Now, I'm—I was looking away. I'm confused.

A. That's okay. I—my interview was on the 9th, and I don't remember right now—I know I've testified to this—whether I found out that afternoon or it was on Monday that I got the informal offer.

Q. Mm-hmm.

A. So, if you want to tell me what I said in my grand jury testimony, I'll be happy to affirm that.

Q. I think we may be talking about perhaps an informal offer. Does that—on the 9th?

A. Yes. I know it was—okay. Was it on the—I don't—

Q. Yes.

A. —remember if it was the 9th or the 13th—

A. Okay.

Q. —but I know Ms. Sideman called me to extend an informal offer, and I accepted.

Q. Okay. Now, in regard to the affidavit—do you still have your draft in front of you?

A. Yes, sir.

Q. In paragraph number 3, you say: "I can not fathom any reason—fathom any reason why—that the plaintiff would seek information from me for her case."

A. Yes, sir.

Q. Did Mr. Carter at all go into the gist of the Paula Jones lawsuit, the sexual harassment part of it, and tell you what it was about?

A. I think I knew what it was about.

Q. All right. And then you indicated that you didn't like the part about the doors, being behind closed doors, but on the sexual relationship, paragraph 8, the first sentence, "I've never had a sexual relationship with the President"—

A. Mm-hmm.

Q. —that's not true, is it?

A. No. I haven't had intercourse with the President, but—

Q. Was that the distinction you made when you signed that affidavit, in your own mind?

A. That was the justification I made to myself, yes.

Q. Let me send you the final affidavit. It might be a little easier to work from—

A. Okay.

Q. —than the—than the original.

MR. BRYANT: Do we have all the—1235.

[Witness handed document.]

SENATOR DeWINE: Congressman?

MR. BRYANT: Yes.

SENATOR DeWINE: We're down to 3 minutes on the tape. Would now be a good time to have him switch tapes and then we'll go right back in?

MR. BRYANT: Okay, that would be fine.

SENATOR DeWINE: I think we'll hold right at the table, and we'll get the tapes switched.

THE VIDEOGRAPHER: Okay, we will do that now.

This marks the end of Videotape Number 2 in the deposition of Monica S. Lewinsky.

We are going off the record at 14:31 hours.

[Recess.]

THE VIDEOGRAPHER: This marks the beginning of Videotape Number 3 in the deposition of Monica S. Lewinsky. The time is 14:44 hours.

SENATOR DeWINE: We are back on the record.

Let me advise counsel that you have used 3 hours and 2 minutes.

Congressman Bryant, you may continue.

MR. BRYANT: Thank you, sir.

BY MR. BRYANT:

Q. Ms. Lewinsky, let me just follow up on some points here, and then I'll move toward the conclusion of my direct examination very, very quickly, I hope.

In regard to the affidavit—I think you still have it in front of you—the final copy of the affidavit—I wanted to revisit your answer about paragraph 8—

A. Yes, sir.

Q. —and also refer you to your grand jury testimony of August the 6th. This begins on—actually, it is on page 1013 of the—it should be the Senate record, in the appendices, but it's your August 6th, 1998, grand jury testimony.

And it's similar to the—my question about paragraph 8 about the sexual relationship— and I notice you—you now carve out an exception to that by saying you didn't have intercourse, but I would direct your attention to a previous answer and ask if you can recall being asked this question in your grand jury testimony and ask—giving the answer—the question is: "All right. Let me ask you a straightforward question. Paragraph 8, at the start, says, quote, 'I have never had a sexual relationship with the President,' unquote. Is that true?," and your answer is, "No."

Now, do you have any comment about why your answer still would not be no, that that is not a true statement in paragraph 8?

A. I think I was asked a different question.

Q. Okay.

A. My recollection, sir, was that you asked me if that was a lie, if paragraph 8 was—I—I'm not trying to—

Q. Okay. Well, if—if I ask you today the same question that was asked in your grand jury, is your statement, quote, "I have never had a sexual relationship with the President," unquote, is that a true statement?

A. No.

Q. Okay, that's good.

Now, also in paragraph 8, you mention that there were occasions after you left—I think it looks like the—the last sentence in paragraph 8, "The occasions that I saw the President after I left my employment at the White House in April 1996 were official receptions, formal functions, or events related to the United States Department of Defense, where I was working at the time," period—actually the last sentence, "There were other people present on those occasions." Now, that also is not a truthful statement; is that correct?

A. It—I think I testified that this was misleading. It's incomplete—

Q. Okay. It's not a truthful statement?

A. —and therefore, misleading.

Well, it—it is true; it's not complete.

Q. Okay. All right. Now, I will accept that.

A. Okay. Thank you.

Q. Thank you.

Going back to the gift retrieval of December the 28th, I want to be clear that we're on the same sheet of music on this one. As I understand, there's no doubt in your mind that Betty Currie called you, initiated the call to you to pick up the gifts? She—

A. That's how I remember this event.

Q. And you went through that process, and at the very end, you were sitting out in the car with her, with a box of gifts, and it was only at that time that you asked her to keep these gifts for you?

A. I don't think I said "gifts." I don't—

Q. Or keep this package?

A. I think I said—gosh, was it in the car that I said that or on the phone? I think it was in the car. I—I'm—I don't know if that makes a difference.

Q. But this was at the end of a process that Betty Currie had initiated by telephone earlier that day to come pick up something that you have for her?

A. Yes.

Q. Okay. Now, were you ever under the impression from anything that the President said that you should turn over all the gifts to the Jones lawyers?

A. No, but where this is a little tricky—and I think I might have even mentioned this last weekend—was that I had an occasion in an interview with one of the—with the OIC—where I was asked a series of statements, if the President had made those, and there was one statement that Agent Phalen said to me—I—there were—other people, they asked me these statements—this is after the President testified and they asked me some statements, did you say this, did you say this, and I said, no, no, no. And Agent Phalen said something, and I think it was, "Well, you have to turn over whatever you have." And I said to you, "You know, that sounds a little bit familiar to me."

So that's what I can tell you on that.

Q. That's in the 302 exam?

A. I don't know if it's in the 302 or not, but that's what happened.

Q. Uh-huh.

A. Or, that's how I remember what happened.

Q. Okay. And your response to the question in the deposition that I just asked you—were you ever under the impression from anything the President said that you should have—that you should turn over all the gifts to the Jones lawyers—your answer in that deposition was no.

A. And which date was that, please?

Q. The deposition was August the 26th.

A. Oh, the 26th.

Q. Yes.

A. It might have been after that, or maybe it was—I don't—

Q. Okay. I wanted to ask you, too, about a couple of other things in terms of your testimony. Regarding the affidavit—and this appears to be, again, grand jury testimony—

A. Sir, do you have a copy that I could look at if you're going to—

Q. Sure. August, the August 6th—233—it's the—it's this page here.

While we're looking at that, let me ask you a couple other things here. I wanted to ask you—I talked to you a little bit about the President today and your feelings today that persist that you think he's a good President, and I assume you think he's a very intelligent man?

A. I think he's an intelligent President.

[Laughter.]

MR. BRYANT: Okay. Thank goodness, this is confidential; otherwise, that might be the quote of the day. I know we won't see that in the paper, will we?

BY MR. BRYANT:

Q. Referring to January the 18th, 1998, the President had a conversation with Betty Currie, and he made five statements to her. One was that "I was never really alone with Monica; right?" That's one. That's not true, is it, that "I was never alone with"—

A. Sir, I was not present for that conversation. I don't feel comfortable—

Q. Let me ask you, though—I realize none of us were there—but that statement, "I was never really alone with Monica; right?"—that was not—he was alone with you on many occasions, was he not?

A. I—I'm not trying to be difficult, but I feel very uncomfortable making judgments on what someone else's statement when they're defining things however they want to define it. So if you—if you ask me, Monica, were you alone with the President, I will say yes, but I'm not comfortable characterizing what someone else says—

Q. Okay.

A. —passing judgment on it. I'm sorry.

Q. Were you—was Betty Currie always with you when the President was with you?

A. Betty Currie was always at the White House when I went to see the President at the White House after I left working at the White House.

Q. But was—at all times when you were alone with the President, was Betty Currie always there with you?

A. Not there in the room.

Q. Okay. Did—did—did you come on to the President, and did he never touch you physically?

A. I guess those are two separate questions, right?

Q. Yes, they are.

A. Did I come on to him? Maybe on some occasions.

Q. Okay.

A. Not initially.

Q. Okay. Not initially.

A. I—

Q. Did he ever—did he ever touch you?

A. Yes.

Q. Okay. Could Betty Currie see and hear everything that went on between the two of you all the time?

A. I can't answer that. I'm sorry.

Q. As far as you know, could she see and hear everything that went on between the two of you?

A. Well, if I was in the room, I couldn't—I—I couldn't be in the room and being able to see if Betty Currie could see and hear what was—

Q. I think I—

MR. STEIN: Wouldn't it be a little speedier—if I may make this observation, you have her testimony; you have the evidence of—

SENATOR DeWINE: Counsel, is this an objection?

MR. STEIN: I just would ask him to draw whatever inferences there were to speed this up.

SENATOR DeWINE: I'll ask him to rephrase the question.

MR. BRYANT: I would just stop at that point. I think, uh, that's enough of that.

BY MR. BRYANT:

Q. The President also had conversations with Mr. Blumenthal on January the 21st, 1998, and indicated that you came on to the President and made a sexual demand. At the initial part of this, did you come on to the President and make a sexual demand on the President?

A. No.

Q. At the initial meeting on November the 15th, 1995, did he ever rebuff you from these advances, or from any kind of—

A. On November 15th?

Q. November 15th. Did he rebuff you?

A. No.

Q. Did you threaten him on November 15th, 1995?

A. No.

Q. On January 23rd, 1998, the President told John Podesta that—many things. I'll—I'll withdraw that. Let me go—kind of wind this down. I'd like to save some time for redirect.

You've indicated that with regard to the affidavit and telling the truth, there is some testimony I'd like to read you from your deposition that we started out—August the 6th—I'm sorry—the grand jury, August 6th, 1998—

MS. MILLS: What internal page number?

MR. SCHIPPERS: 1021 internal, 233.

MR. BRYANT: Okay, we need to get her a copy.

MR. SCHIPPERS: Do you have the August 6th still over there?

THE WITNESS: I can share with Sydney—if you don't mind.

[Witness perusing document.]

BY MR. BRYANT:

Q. Beginning—do you have page 233—

A. Uh-huh.

Q. —okay—beginning at line 6—

A. Okay.

Q. —it reads—would you prefer to read that? Why don't you read—

A. Out loud?

Q. Would you read it out loud?

A. Okay.

Q. Through line 16—6 through 16. This is your answer.

A. "Sure. Gosh. I think to me that if—if the President had not said the Betty and letters cover, let's just say, if we refer to that, which I'm talking about in paragraph 4, page 4, I would have known to use that. So to me, encouraging or asking me to lie would have—you know, if the President had said, Now, listen, you'd better not say anything about this relationship, you'd better not tell them the truth, you'd better not—for me, the best way to explain how I feel what happened was, you know, no one asked or encouraged me to lie, but no one discouraged me, either."

Q. Okay. That—that statement, is that consistent in your view with what you've testified to today?

A. Yes.

Q. Okay. Look at page 234, which is right below there.

A. Okay. [Perusing document.]

Q. Beginning with the—your answer on line 4, and read down, if you could, to line 14—4 through 14.

A. "Yes and no. I mean, I think I also said that Monday that it wasn't as if the President called me and said, You know, Monica, you're on the witness list. This is going to be really hard for us. We're going to have to tell the truth and be humiliated in front of the entire world about what we've done, which I would have fought him on, probably. That was different. And by him not calling me and saying that, you know, I knew what that meant. So I, I don't see any disconnect between paragraph 10 and paragraph 4 on the page. Does that answer your question?"

Q. Okay. Now, has that—has your testimony today been consistent with that provision?

A. I—I think so.

Q. Okay.

A. I've intended for my testimony to be consistent with my grand jury testimony.

Q. Okay. And one final read just below that, line 16 through 24.

A. "Did you understand all along that he would deny the relationship also?"

"Mm-hmm, yes."

Q. And 19 through 24—the rest of that.

A. Oh, sorry.

"And when you say you understood what it meant when he didn't say, Oh, you know you must tell the truth, what did you understand that to mean?"

"That, that, as we had on every other occasion and in every other instance of this relationship, we would deny it."

MR. BRYANT: Okay.

Could we have just—go off the record here a minute?

SENATOR DeWINE: Sure. Let's go off the record at this point.

THE VIDEOGRAPHER: We're going off the record at 1459 hours.

[Recess.]

THE VIDEOGRAPHER: We're going back on the record at 1504 hours.

SENATOR DeWINE: Manager Bryant, you may proceed.

MR. BRYANT: Thank you, Senator.

BY MR. BRYANT:

Q. Ms. Lewinsky, I have just a few more questions here.

With regard to the false affidavit, you do admit that you filed an untruthful affidavit with the court in the Jones case; is that correct?

A. I think I—I—yes—I mean, it was incomplete and misleading, and—

Q. Okay. With regard to the cover stories, on December the 6th, you and the President went over cover stories, and in the same conversation he encouraged you to file an affidavit in the Jones case; is that correct?

A. No.

MS. SELIGMAN: I think that misstates the record.

BY MR. BRYANT:

Q. All right. On December the 17th. Let's try December 17; all right?

A. Okay.

Q. You and the President went over cover stories—that's the telephone conversation—

A. Okay—I'm sorry—can you repeat the question?

Q. Okay. On December 17th, you and the President went over cover stories in a telephone conversation.

A. Correct.

Q. And in that same telephone conversation, he encouraged you to file an affidavit in the Jones case?

A. He suggested I could file an affidavit.

Q. Okay. With regard to the job, between your meeting with Mr. Jordan in early November and December the 5th when you met with Mr. Jordan again, you did not feel that Mr. Jordan was doing much to help you get a job; is that correct?

MS. SELIGMAN: Objection. Misstates the record.

BY MR. BRYANT:

Q. Okay. You can answer that.

A. It—

Q. Let me repeat it. Between your meeting with Mr. Jordan in early November and December the 5th when you met with Mr. Jordan again, you did not feel that Mr. Jordan was doing much to help you get a job; is that correct?

MS. SELIGMAN: Same objection.

THE WITNESS: Do you mean when I met with him again on December 11th? I don't—

MR. BRYANT: The—

THE WITNESS: —I didn't meet with Mr. Jordan on December 5th. I'm sorry—

MR. BRYANT: Okay.

THE WITNESS: —am I misunderstanding something?

MR. BRYANT: We're getting our numbers wrong here.

THE WITNESS: Okay.

BY MR. BRYANT:

Q. Between your meeting with Mr. Jordan in early November and December the 11th when you met with Mr. Jordan again, you did not feel that Mr. Jordan was doing much to help you get a job; is that correct?

A. I hadn't seen any progress.

Q. Okay. After you met with Mr. Jordan in early December, you began to interview in New York and were much more active in your job search; correct?

A. Yes.

Q. In early January, you received a job offer from Revlon with the help of Vernon Jordan; is that correct?

A. Yes.

Q. Okay. With regard to gifts, regarding the gifts that were subpoenaed in the Jones case, you are certain that Ms. Currie called you and that she understood you had something to give her; is that correct?

A. That's my recollection.

Q. You never told Ms. Currie to come pick up the gifts or that Michael Isikoff had called about them; is that correct?

A. I don't recall that.

Q. Regarding stalking, you never stalked the President; is that correct?

A. I—I don't believe so.

Q. Okay. You and the President had an emotional relationship as well as a physical one; is that right?

A. That's how I'd characterize it.

Q. Okay. He never rebuffed you?

A. I—I think that gets into some of the intimate details of—no, then, that's not true. There were occasions when he did.

Q. Uh-huh. Okay. But he never rebuffed you initially on that first day, November the 15th, 1995?

A. No, sir.

LAW OFFICES OF
PLATO CACHERIS,
Washington, DC, February 2, 1999.

Re February 1, 1999, Monica S. Lewinsky deposition transcript.

DEAR MS. JARDIM AND MR. BITSKO: Upon our review of the videotape and transcript of Monica S. Lewinsky's deposition transcript, we have noted the following errors or omissions:

Page	Line	Corrections
19	14	The oath and affirmation are not transcribed.
24	9	''second . . .'' should replace ''2d''
44	6	Comments by counsel are not transcribed.
61	11–13	Delete quotation marks. These are not direct quotes in this instance.
62	23	''town'' should replace ''down''
63	17	''called'' should replace ''found''
63	23	''after Thanksgiving'' should follow ''back.''
63	24	Insert following line 23: A: Yes I did. Q: What did he tell you then?
65	21	''tchotchke'' should replace ''chochki''
65	24	''on'' should replace ''home''
66	20	The line should read: ''see if I could see the President. I apologize,'' not ''see if I could see the President and apologize.''
75	1	''needed'' should replace ''need''
90	5	''the'' should replace ''some''
116	16	''said'' should precede ''list''
128	9	''that's'' should replace ''of''
154	5	Delete quotation marks.
156	6	''Seidman'' should replace ''Sideman''
161	15	''Fallon'' should replace ''Phalen''

Provided these changes are made, we will waive signature on behalf of Ms. Lewinsky.

We understand from Senate Legal Counsel that copies of this letter will be made available to the parties and Senate.

Thank you for your assistance.

Sincerely,

PLATO CACHERIS.
PRESTON BURTON.
SYDNEY HOFFMANN.

IN THE SENATE OF THE UNITED STATES SITTING FOR THE TRIAL OF THE IMPEACHMENT OF WILLIAM JEFFERSON CLINTON, PRESIDENT OF THE UNITED STATES

EXCERPTS OF VIDEO DEPOSITION OF VERNON E. JORDAN, JR.

(Tuesday, February 2, 1999, Washington, D.C.)

SENATOR THOMPSON: All right. If there are no further questions from the parties or counsel for the witness, I'll now swear in the witness. Mr. Jordan, will you please raise your right hand?

Do you, Vernon E. Jordan, Jr., swear that the evidence you shall give in this case now pending between the United States and William Jefferson Clinton, President of the United States, shall be the truth, the whole truth, and nothing but the truth, so help you, God?

THE WITNESS: I do.

Whereupon, VERNON E. JORDAN, JR., was called as a witness and, after having been first duly sworn by Senator Fred Thompson, was examined and testified as follows:

SENATOR THOMPSON: All right. The House Managers may begin their questioning of the witness.

MR. HUTCHINSON: Thank you, Senator Thompson and Senator Dodd.

BY MR. HUTCHINSON:

Q. Good morning, Mr. Jordan. For the record, would you state your name, please?

A. Good morning, Congressman. My name is Vernon E. Jordan, Jr.

Q. And, Mr. Jordan, we have not had the opportunity to meet previously, is that correct?

A. That is correct.

Q. And I do appreciate—I have met your counsel, Mr. Hundley, in his office, and so I've looked forward to this opportunity to meet you. Now, you have—

A. I can't say that the feeling is mutual.

[Laughter.]

BY MR. HUTCHINSON:

Q. I certainly understand.

You have testified, I believe, five times previously before the Federal grand jury?

A. That is correct.

Q. And so I know that probably about every question that could be asked has been asked, but there are a number of reasons I want to go over additional questions with you, and some of them will be repetitious of what's been asked before.

Prior to coming in today, though, have you had the opportunity to review your prior testimony in those five appearances before the grand jury?

A. I have done some preparation, Congressman.

Q. And let me start with the fact that the oath that you took today is the same as the oath that you took before the Federal grand jury?

A. I believe that's correct.

Q. And, Mr. Jordan, what is your profession?

A. I am a lawyer.

Q. And where do you practice your profession?

A. I am a senior partner at the law firm of Akin, Gump, Strauss, Hauer & Feld, here in Washington, D.C., with offices in Texas, California, Pennsylvania and New York, three offices in Europe, London, Brussels and Moscow.

Q. And how long have you been a senior partner?

A. I have been a senior partner—well, I didn't start out as a senior partner. I started out as a partner, and at some point—I don't know when, but not long thereafter I was elevated to this position of senior partner.

Q. And what type of law do you practice?

A. I am a corporate international generalist at Akin, Gump.

Q. And does Akin, Gump have about 800 lawyers?

A. We have about 800 lawyers, yes.

Q. Which is an incredible number for lawyers from someone who practiced law in Arkansas.

How do all of those lawyers—

A. We have some members of our law firm who are from Arkansas, so it's not unusual for them.

Q. And how is it that you are able to obtain enough business for 800 lawyers?

A. I don't think that's my entire responsibility. I'm just one of 800 lawyers, and that is what I do in part, but I'm not alone in that process of making rain.

Q. When you say "making rain," that's the terminology of being a rainmaker?

A. I think even in Arkansas, you understand what rainmaking is.

Q. We've read Grisham books.

And so, when you say making rain or being a rainmaker, that is to bring in business so that you can keep the lawyers busy practicing law?

A. Well, that is—that is part and parcel of the practice of law.

Q. And do you bill by the hour?

A. I do not.

Q. And I understand you used to, but you do not anymore?

A. I graduated.

Q. A fortunate graduation.

And when the—when you did bill by the hour, what was your billable rate the last time you had to do that?

A. I believe my billable rate at the last time was somewhere between 450 and 500 an hour.

Q. Now, would you describe—

A. Not bad for a Georgia boy. I'm from Georgia. You've heard of that State, I'm sure.

Q. It's probably not bad from Washington standards.

Would you describe the nature of your relationship with President Clinton?

A. President Clinton has been a friend of mine since approximately 1973, when I came to your State, Arkansas, to make a speech as president of the National Urban League about race and equal opportunity in our Nation, and we met then and there, and our friendship has grown and developed and matured and he is my friend and will continue to be my friend.

Q. And just to further elaborate on that friendship, it's my understanding that he and his—and the First Lady has had Christmas Eve dinner with you and your family for a number of years?

A. Every year since his Presidency, the Jordan family has been privileged to entertain the Clinton family on Christmas Eve.

Q. And has there been any exceptions in recent years to that?

A. Every year that he has been President, he has had, he and his family, Christmas Eve with my family.

Q. And have you vacationed together with the Clinton family?

A. Yes. I think you have seen reels of us playing golf and having fun at Martha's Vineyard.

Q. And so you vacation together, you play golf together on a semi-regular basis?

A. Whenever we can. We've not been doing it recently, for reasons that I think are probably very obvious to you, Counsel.

Q. Well, explain that to me.

A. Just what I said, for a time, I was going before the grand jury, and under the advice of counsel and I'm sure under advice of the President's counsel, it was thought best that we not play golf together.

So, from the time that I first went to the grand jury, I don't think—we have not played golf this year, unfortunately, together.

Q. Since you—I think your first appearance at the grand jury was March 3 of '98. Then you went March 5, and then in May, I believe you were two times before the grand jury and then one in June of '98.

Since your last testimony before the grand jury in June of '98, have you been in contact with the President of the United States?

A. Yes, I have.

Q. And are these social occasions or for business purposes?

A. Social occasions. I was invited to the Korean State Dinner. I forget when that was. I think that was the first time I was in the White House since Martin Luther King Day of last year.

I saw the President at Martha's Vineyard. I was there when he got off Air Force One to greet him and welcome him to—to the Vineyard, and I was at the White House for one of the performances about music. The Morgan State Choir sang, and so I've been to the White House only for social occasions in the last year since Martin Luther King's birthday, I believe.

Q. Have you had any private conversations with the President?

A. Yes, I have, as a matter of fact.

Q. And has this been on the telephone or in person?

A. I've talked to him on the telephone, and I talked to him at the Vineyard. He was at my house on Christmas Eve. There were a lot of people around, but, yes, I've talked to the President.

Q. And did you discuss your testimony before the grand jury or his testimony before the grand jury?

A. I did not.

Q. There was one reference that he made in his Federal grand jury testimony, and I'll refer counsel, if they would like. It was on page 77 of the President's testimony in his appearance before the grand jury on August 17th.

And he referenced discussions with you, and he said, "I think I may have been confused in my memory because I've also talked to him on the phone about what he said, about whether he had talked to her or met with her. That's all I can tell you," and I believe the "her" is a reference to Ms. Lewinsky.

And it appeared to me from reading that, that there might have been some conversations with you by the President, perhaps in reference to your grand jury testimony or your knowledge of when and how you talked to Ms. Lewinsky.

A. If I understand your question about whether or not the President of the United States and I talked about my testimony before the grand jury or his testimony before the grand jury, I can say to you unequivocally that the President of the United States and I have not discussed our testimony. I was advised by my counsel, Mr. Hundley, not to discuss that testimony, and I have learned in this process, Mr. Hutchinson, to—to take the advice of counsel.

Q. I would certainly agree that that is good counsel to take, but going back to the question—and I will try to rephrase it because it was a very wordy question

that I asked you—and it's clear from your testimony that you have not discussed your grand jury testimony—

A. That is correct.

Q. —but did you, subsequent to your last testimony before the grand jury, talk to the President in which you discussed conversation that you have had with Monica Lewinsky?

A. I have not discussed a conversation that I have had with Monica Lewinsky with the President of the United States.

Q. And have you had any discussions about Monica Lewinsky with the President of the United States since your last testimony before the grand jury?

A. I have not.

Q. Now, going back to your relationship with the President, you have been described as a friend and advisor to the President. Is that a fair terminology?

A. I think that's fair.

Q. And in the advisor capacity, had you served as co-chairman of the Clinton-Gore transition team in 1992?

A. I believe I was chairman.

Q. That is an important distinction.

And have you served in any other official or semi-official capacities for this administration?

A. I have not, except that I was asked by the President to lead the American delegation to the inauguration of President Li in Taiwan, and that was about as official as you can get, but beyond that, I have not—not had any official capacity.

For a very brief moment, very early in the administration, I was appointed to the Foreign Intelligence Advisory Committee, and I went to one meeting and stayed half that meeting, went across the street and told Bruce Lindsey that that was not for me.

Q. Now, let's move on. After we've established to a certain degree your relationship with the President, let's move on to January 20th of 1998, and just to put that in clearer terms, this is a Tuesday after the January 17 deposition of President Clinton in the Paula Jones civil rights case. Do you recall that time frame?

A. [Nodding head up and down.]

Q. This is in the afternoon of January 20th, again, after the President's deposition. You contacted Mr. Howard Gittis, who I believe is General Counsel of McAndrews & Forbes Holdings?

A. Howard Gittis is Vice Chairman of McAndrews, Forbes, and he is not the General Counsel. He is a lawyer, but he is not the General Counsel.

Q. And what was the purpose of you contacting Mr. Howard Gittis on January 20th?

A. If I talked to Howard Gittis on the 20th, I don't recall exactly what my conversation with Howard Gittis was about. I think it was a telephone call, maybe.

Q. And that's difficult. Let me see if I can't help you in that regard.

A. Right.

Q. Was the purpose of that call with Mr. Gittis to arrange breakfast the next morning on January 21st?

A. Yeah. I was in New York, and I did call Mr. Gittis and say—and as I remember, I had breakfast with him on the 21st, I believe. Yes, I did.

Q. And this is a breakfast that you had set up?

A. Yes.

Q. And what was the reason you made the decision to request a breakfast meeting with Mr. Gittis?

A. Yes. As I remember, I had gotten a telephone call from David Bloom at 1 o'clock in the morning at the St. Regis Hotel about the matter that was about to break having to do with the entire Lewinsky matter, and I had not at any time discussed the Lewinsky matter with—with Howard Gittis. And so I had breakfast with him to tell him that reporters were calling, that this would obviously involve Revlon, which had responded to my—my efforts to find Ms. Lewinsky employment, and so Howard Gittis is a friend of mine. Howard Gittis is a fellow board member with me at Revlon. He is the Vice Chairman of McAndrews & Forbes, and I thought it—I thought I had—it was incumbent upon me to stop and say, "Listen, there's trouble a-brewing."

Q. And just—you've mentioned McAndrews & Forbes and Revlon. McAndrews & Forbes, am I correct, is the parent company of—

A. It's the holding company.

Q. The holding company of Revlon and presumably other companies.

And you sit on the board of McAndrews & Forbes?

A. I do not. I sit on the board of Revlon.

Q. All right. And that is a position that brings you an annual salary—

A. There is a director's fee.

Q. You receive a director's fee, and in addition, your law firm receives—from business from—

A. We do—

Q. —Revlon?

A. We do. We do business. We've represented Revlon, and we represented Revlon before I was elected a director.

Q. And you mention that things were breaking that you felt like you needed to advise Mr. Gittis concerning. At the time that you made the arrangements for the breakfast on January 21st, had you become aware of the Drudge Report?

A. Yes, I had.

Q. And you had had lunch with Bruce Lindsey on January 20th?

A. No. I don't think it was on January—it was on Sunday. No, that was not the 20th.

Q. And during that luncheon, did you become aware of the Drudge Report—

A. That is correct.

Q. —and receive a copy of it?

A. That is correct.

Q. And that was from Bruce Lindsey?

A. That is correct.

Q. And that Drudge Report, did it mention your name?

A. I don't think so, but I don't remember.

Q. Was there some news stories that had mentioned your name in reference to Ms. Lewinsky and the President?

A. I believe that my name has been an integral part of this process from the beginning.

Q. And did you in fact have the breakfast meeting with Mr. Gittis?

A. Yes, I did.

Q. And what information did you convey to Mr. Gittis concerning Ms. Lewinsky at that breakfast meeting?

A. I just simply said that the press was calling about Ms. Lewinsky; that while I had not dealt with him, I had dealt with Richard Halperin, I had dealt with Ronald Perelman. I had not dealt with him, but that he ought to know and that I was sorry about this.

And I also said that it would probably be even more complicated because early on I had referred Webb Hubbell to them to be hired as counsel.

Q. And I want to get to that in just a moment, but you indicated that you said you were sorry. Were you referring to the problems that this might create for the company?

A. Well, I was obviously concerned. I am a director. I am their counsel. They're my friends. And publicity was breaking. I thought I had some responsibility to them to give them a heads-up as to what was going on.

Q. Now, is it true that your efforts to find a job for Ms. Lewinsky that you referenced in that meeting with Mr. Gittis—were your efforts carried out at the request of the President of the United States?

A. There is no question but that through Betty Currie, I was acting on behalf of the President to get Ms. Lewinsky a job. I think that's clear from my grand jury testimony.

Q. Okay. And I just want to make sure that that's firmly established. And in reference to your previous grand jury testimony, you indicated, I believe, on May 28th, 1998, at page 61, that "She"—referring to Betty Currie—"was the one that called me at the behest of the President."

A. That is correct, and I think, Congressman, if in fact the President of the United States' secretary calls and asks for a request that you try to do the best you can to make it happen.

Q. And you received that request as a request coming from the President?

A. I—I interpreted it as a request from the President.

Q. And then, later on in June of '98 in the grand jury testimony at page 45, did you not reference or testify that "The President asked me to get Monica Lewinsky a job"?

A. There was no—there was no question but that he asked me to help and that he asked others to help. I think that is clear from everybody's grand jury testimony.

Q. And just one more point in that regard. In the same grand jury testimony, is it correct that you testified that "He"—referring to the President—"was the source of it coming to my attention in the first place"?

A. I may—if that is—if you—if it's in the—

Q. It's at page 58 of the grand jury—

A. I stand on my grand jury testimony.

Q. All right. Now, during your efforts to secure a job for Ms. Lewinsky, I think you mentioned that you talked to Mr. Richard Halperin.

A. Yes.

Q. And he is with McAndrews & Forbes?

A. Yes.

Q. And you also at one point talked to Mr. Ron Perelman; is that correct?

A. I made a call to Mr. Perelman, I believe, on the 8th of January.

Q. And he is the—

A. He is the chairman/CEO of McAndrews Forbes. He is a majority shareholder in McAndrews Forbes. This is his business.

Q. Now, at the time that you requested assistance in obtaining Ms. Lewinsky a job, did you advise Mr. Perelman or Mr. Halperin of the fact that the request was being carried out at the request of the President of the United States?

A. I don't think so. I may have.

Q. Well, the first answer you gave was "I don't think so." Now, in fact, you did not advise either Mr. Perelman or Mr. Halperin of that fact because am I correct that Mr. Perelman—or, excuse me, Mr. Gittis—expressed some concern that Revlon was never advised of that fact?

A. Then, uh, I cannot say, I guess, precisely that I told that "I am doing this for the President of the United States."

I do believe, on the other hand, that given the fact that she was in the White House, given the fact that she had been a White House intern, I would not be surprised if that was their understanding.

Q. Well, in your conversation with Mr. Halperin.

A. Yes—I'm certain I did not say that to Richard Halperin.

Q. Okay. So there's no question that you did not tell Mr. Halperin that you were acting at the request of the President?

A. I'm fairly certain I did not.

Q. And in your conversation with Mr. Perelman, did you indicate to him that you were calling—or you were seeking—employment for Ms. Lewinsky at the request of the President?

A. Yes—I don't think that I, that I made that explicit in my conversation with Mr. Perelman, and I'm not sure I thought it necessary to say "This is for the President of the United States."

By the same token, I would have had no hesitance in doing that.

Q. Now, at the time that you had called Mr. Perelman, which I believe you testified was in January of '98—

A. That's right.

Q. —I think you said January 8th—

A. Right.

Q. —you were aware at that time, were you not, that Ms. Lewinsky had received a subpoena to give a deposition in the Jones versus Clinton case?

A. That is correct.

Q. At the time that you talked to Mr. Perelman requesting his assistance for Monica Lewinsky, did you advise Mr. Perelman of the fact that Ms. Lewinsky was under subpoena in the Jones case?

A. I did not.

Q. And when you—did Mr. Perelman, Mr. Gittis or Mr. Halperin ever express to you disappointment that they were not told of two facts—either of these two facts—one, that Ms. Lewinsky was being helped at the request of the President; and secondly, that she was known by you and the President to be under subpoena in that case?

A. No.

Q. Now, you are on the board of directors of Revlon.

A. I am.

Q. And how long have you been on the board of Revlon?

A. I forget. Ten years, maybe.

Q. And as a member of the board of directors, do you not have a fiduciary responsibility to the company?

A. I do.

Q. And how would you define a fiduciary responsibility?

A. I define my fiduciary responsibility to the company about company matters.

Q. And how would you define fiduciary responsibility in reference to company matters?

A. Anything that has to do with the company, that I believe in the interest of the company, I have some fiduciary responsibility to protect the company, to help the company in any way that I—that is possible.

Q. And is fiduciary responsibility sometimes considered a trust relationship in which you owe a degree of trust and responsibility to someone else?

A. I think—I think that "trust" and "fiduciary" are probably synonymous.

Q. Okay. Do you believe that you were acting in the company's interest or the President's interest when you were trying to secure a job for Ms. Lewinsky?

A. Well, what I knew was that the company would take care of its own interest. This is not the first time that I referred somebody, and what I know is, is that if a person being referred does not meet the standards required for that company, I have no question but that that person will not be hired. And so the referral is an easy thing to do; the judgment about employment is not a judgment as a person referring that I make. But I do have confidence in all of the companies on whose boards that I sit that, regardless of my reference, that as to their needs and as to their expectations for their employees that they will make the right decisions, as happened in the American Express situation.

American Express called and said: We will not hire Ms. Lewinsky. I did not question it, I did not challenge it, because they understood their needs and their needs in comparison to her qualifications. They made a judgment. Revlon, on the other hand, made another judgment.

I am not the employer, I am the referrer, and there is a major difference.

Q. Now, going back to what you knew as far as information and what you conveyed to Revlon, you indicated that you did not tell Mr. Halperin that you were making this request or referral at the request of the President of the United States.

A. Yes, and I didn't see any need to do that.

Q. And then, when you talked to Mr.—

A. Nor do I believe not saying that, Counselor, was a breach of some fiduciary relationship.

Q. And when you had your conversation with Mr. Perelman—

A. Right.

Q. —at a later time—

A. Right.

Q. —you do not remember whether you told him—you do not believe you told him you were calling for the President—

A. I believe that I did not tell him.

Q. —but you assumed that he knew?

A. No. I did not make any assumptions, let me say. I said: Ronald, here is a young lady who has been interviewed. She thinks the interview has not gone well. See what you can do to make sure that she is properly interviewed and evaluated—in essence.

Q. And did you reference her as a former White House intern?

A. Probably. I do not have a recollection of whether I described her as a White House intern, whether I described her as a person who had worked for the Pentagon. I said this is a person that I have referred.

I think, Mr. Hutchinson, that I have sufficient, uh, influence, shall we say, sufficient character, shall we say, that people have been throughout my career able to take my word at face value.

Q. And so you didn't need to reference the President. The fact that you were calling Mr. Perelman—

A. That was sufficient.

Q. —and asking for a second interview for Ms. Lewinsky, that that should be sufficient?

A. I thought it was sufficient, and obviously, Mr. Perelman thought it was sufficient.

Q. And so there is no reason, based on what you told him, for him to think that you were calling at the request of the President of the United States?

A. I think that's about right.

Q. And so, at least with the conversation with Mr. Halperin and Mr. Perelman, you did not reference that you were acting in behalf of the President of the United States. Was there anyone else that you talked to at Revlon in which they might have acquired that information?

A. The only persons that I talked to in this process, as I explained to you, was Mr. Halperin and Mr. Perelman about this process. And it was Mr. Halperin who put the—who got the process started.

Q. So those are the only two you talked about, and you made no reference that you were acting in behalf of the President?

A. Right.

Q. Now, the second piece of information was the fact that you knew and the President knew that Ms. Lewinsky was under subpoena in the Jones case, and that information was not provided to either Mr. Halperin or to Mr. Perelman; is that correct?

A. That's correct.

Q. Now, I wanted to read you a question and answer of Mr. Howard Gittis in his grand jury testimony of April 23, 1998.

The question was: "Now, you had mentioned before that one of the responsibilities of director is to have a fiduciary duty to the company. If it was the case that Ms. Lewinsky had been noticed as a witness in the Paula Jones case, and Vernon Jordan had known that, is that something that you believe as a person who works for McAndrews & Forbes, is that something that you believe that Mr. Jordan should have told you, or someone in the company, not necessarily you, but someone in the company, when you referred her for employment?"

His answer was "Yes."

Do you disagree with Mr. Gittis" conclusion that that was important information for McAndrews & Forbes?

A. I obviously didn't think it was important at the time, and I didn't do it.

Q. Now, in your previous answers, you reference the fact that you——

A. I think, on the other hand, that had she been a defendant in a murder case and I knew that, then I probably wouldn't have referenced her. But her being a witness in a civil case I did not think important.

Q. Despite the fact that you were acting at the request of the President, and this witness was potentially adverse to the President's interest in that case?

A. I didn't know that. I mean, I don't—I don't know what her position was or whether it was adverse or not.

Q. All right. Mr. Jordan, prior to you answering that, did you get an answer from your attorney?

A. My attorney mumbled something in my ear, but I didn't hear him.

MR. HUNDLEY: It was a spontaneous remark. I'll try to refrain.

MR. HUTCHINSON: I know that—

THE WITNESS: He does have a right to mumble in my ear, I think.

MR. HUNDLEY: I mumble too loud because I don't hear too well myself.

BY MR. HUTCHINSON:

Q. Now, going back to a complicating factor in your conversation with Mr. Gittis and this embarrassing situation of the Lewinsky job, the complicating fact was that you had also helped Webb Hubbell get a job or consulting contracts with the same company; is that—

A. Yes. You use the word "complicated." I did not view it as a complication. I viewed it as a, as another something that happened, and that that caused some embarrassment to the company, and here again, we were back for another embarrassment for the company, and I thought I had a responsibility to say that.

Q. Would you explain how you helped Webb Hubbell secure a job or a contract with Revlon?

A. Yes. Webb Hubbell came to me after his resignation from the Justice Department. Webb and I got to be friends during the transition, and Webb came to me and he said, "I'm leaving the Justice Department," or "I've left the Justice Department"—I'm not sure which—and he said, "I really need work."

And I said, "Webb, I will do what I can to help you."

I called New York, made arrangements. I took Webb Hubbell to New York. We had lunch. I took him the headquarters of McAndrews & Forbes at 62nd Street. I introduced him to Howard Gittis, Ronald Perelman, and I left.

Q. And did, subsequently, Mr. Hubbell obtain consulting contracts with Revlon?

A. Subsequently, Mr. Hubbell was hired, as I understand it, as outside counsel to McAndrews & Forbes, or Revlon, or some entity within the Perelman empire.

Q. And was that consulting contracts of about $100,000 a year?

A. I—I think so, I think so.

Q. And did you make other contacts with other companies in which you had friends for assistance for Webb Hubbell?

A. I did not.

Q. And was the effort to assist Mr. Webb Hubbell during this time—was it after he left the Department of Justice and prior to the time that he pled guilty to criminal charges?

A. That is correct.

Q. And at the time you assisted Webb Hubbell by securing a job with Revlon for him, was he a potential adverse witness to the President in the ongoing investigation by the Independent Counsel?

A. I don't know whether he was an adverse witness or not. What he was was my friend who had just resigned from the Justice Department, and he was out of work, and he asked for help, and I happily helped him.

Q. And did you know at the time that he was a potential witness in the investigation by the OIC?

A. I don't know whether I knew whether he was a potential witness or not. I simply responded to Webb Hubbell who was a friend in trouble and needing work.

Q. Now, let's backtrack to the time when you first had any contact with Ms. Lewinsky. We've talked about this January 20–21st meeting with Mr. Gittis and covered a little bit of the tail end of this entire episode. Now I would like to go back in time to your first meetings with Ms. Lewinsky.

Now, when was the first time that you recall that you met with Monica Lewinsky?

A. If you've read my grand jury testimony—

Q. I have.

A. —and I'm sure that you have—there is testimony in the grant jury that she came to see me on or about the 5th of November. I have no recollection of that. It was not on my calendar, and I just have no recollection of her visit. There is a letter here that you have in evidence, and I have to assume that in fact that happened. But as I said in my grand jury testimony, I'm not aware of it, I don't remember it—but I do not deny that it happened.

Q. And Ms. Lewinsky has made reference to a meeting that occurred in your office on November 5, and that's the meeting that you have no recollection of?

A. That is correct. We have no record of it in my office, and I just have no recollection of it.

Q. And in your first grand jury appearance, you were firm, shall I say, that the first time you met with Ms. Lewinsky, that it was on December 11th?

A. Yes. It was firm based on what my calendar told me, and subsequently to that, there has been a refreshing of my recollection, and I do not deny that it happened. By the same token, I will tell you, as I said in my grand jury testimony, that I did not remember that I had met with her.

Q. And in fact today, the fact that you do not dispute that that meeting occurred is not based upon your recollection but is simply based upon you've seen the records, and it appears that that meeting occurred?

A. That is correct.

Q. Okay. And you've made reference to my first exhibit there, which is front of you, and I would refer you to this at this time, which is Exhibit 86.

Now, this is captioned as a "Letter from Ms. Lewinsky to Mr. Vernon Jordan dated November 6, 1997," and it appears that this letter thanks you for meeting with her in reference to her job search. And do you recall this—

MR. KENDALL: Mr. Hutchinson, excuse me. May I ask—this is an unsigned copy. Do you have a signed copy of this letter?

MR. HUTCHINSON: Let me go through my questions if I might.

BY MR. HUTCHINSON:

Q. Do you recall receiving this letter?

A. I do not.

Q. Do you ever recall seeing this letter before?

A. The first time I saw this letter was when I was before the grand jury.

Q. And am I correct that it's your testimony that the first time you ever recall hearing the name "Monica Lewinsky" was in early December of '97?

A. That's correct. I—I may have heard the name before, but the first time I remember seeing her and having her in my presence was then.

Q. Well, regardless of whether you met with her in November or not, the fact is you did not do anything in November to secure a job for Ms. Lewinsky until your activities on December 11 of '97?

A. I think that's correct.

Q. And on December 11, I think you made some calls for Ms. Lewinsky on that particular day?

A. I believe I did. I have some—it's all right for me to refresh my recollection?

Q. Certainly.

A. Thank you. [Perusing documents.] I did make calls for her on the 11th, yes.

Q. And may I just ask what you're referring to?

A. I'm referring here to telephone logs prepared by counsel here for me to refresh my recollection about calls.

MR. HUNDLEY: You are welcome to have a copy of that.

THE WITNESS: You are welcome to see it.

MR. HUTCHINSON: Do you have an extra copy?

THE WITNESS: Yes—in anticipation.

MR. HUNDLEY: There are a few calls.

SENATOR THOMPSON: Might this be a good time to take a 5-minute break?

MR. HUTCHINSON: Certainly.

SENATOR THOMPSON: All right. Let's adjourn for 5 minutes.

THE VIDEOGRAPHER: We are going off the record at 10:03 a.m.

[Recess.]

THE VIDEOGRAPHER: We're going back on the record at 10:16 a.m.

SENATOR THOMPSON: All right. Counsel has consumed 38 minutes.

Counsel, would you proceed?

MR. HUTCHINSON: Thank you, Senator Thompson.

At this time, I would offer as Jordan Deposition Exhibit 86, if you don't mind me going by that numerology—

SENATOR THOMPSON: Would it be better to do that or make it Jordan Exhibit Number 1? Does counsel have any preference on that—is that—

MR. HUTCHINSON: One is fine.

SENATOR THOMPSON: Let's do it that way. It will be made a part of the record, Jordan Deposition Number 1.

[Jordan Deposition Exhibit No. 1 marked for identification.]

BY MR. HUTCHINSON:

Q. Mr. Jordan, let me go back to that meeting on December 11th. I believe we were discussing that. My question would be: How did the meeting on December 11 of 1997 with Ms. Lewinsky come about?

A. Ms. Lewinsky called my office and asked if she could come to see me.

Q. And was that preceded by a call from Betty Currie?

A. At some point in time, Betty Currie had called me, and Ms. Lewinsky followed up on that call, and she came to my office, and we had a visit.

Q. Ms. Lewinsky called, set up a meeting, and at some point sent you a resume, I believe.

A. I believe so.

Q. And did you receive that prior to the meeting on December 11th?

A. I—I have to assume that I did, but I—I do not know whether she brought it with her or whether—it was at some point that she brought with her or sent to me—somehow it came into my possession—a list of various companies in New York with which she had—which were here preferences, by the way—most of which I did not know well enough to make any calls for.

Q. All right. And I want to come back to that, but I believe—would you dispute if the record shows that you received the resume of Ms. Lewinsky on December 8th?

A. I would not.

Q. And presumably, the meeting on December 11th was set up somewhere around December 8th by the call from Ms. Lewinsky?

A. I—I would not dispute that, sir.

Q. All right. Now, you mentioned that she had sent you a—I guess some people refer to it—a wish list, or a list of jobs that she—

A. Not jobs—companies.

Q. —companies that she would be interested in seeking employment with.

A. That's correct.

Q. And you looked at that, and you determined that you wanted to go with your own list of friends and companies that you had better contacts with.

A. I'm sure, Congressman, that you too have been in this business, and you do know that you can only call people that you know or feel comfortable in calling.

Q. Absolutely. No question about it. And let me just comment and ask you response to this, but many times I will be listed as a reference, and they can take that to any company. You might be listed as a reference and the name "Vernon Jordan" would be a good reference anywhere, would it not?

A. I would hope so.

Q. And so, even though it was a company that you might not have the best contact with, you could have been helpful in that regard?

A. Well, the fact is I was running the job search, not Ms. Lewinsky, and therefore, the companies that she brought or listed were not of interest to me. I knew where I would need to call.

Q. And that is exactly the point, that you looked at getting Ms. Lewinsky a job as an assignment rather than just something that you were going to be a reference for.

A. I don't know whether I looked upon it as an assignment. Getting jobs for people is not unusual for me, so I don't view it as an assignment. I just view it as something that is part of what I do.

Q. You're acting in behalf of the President when you are trying to get Ms. Lewinsky a job, and you were in control of the job search?

A. Yes.

Q. Now, going back—going to your meeting that we're talking about on December 11th, prior to the meeting did you make any calls to prospective employers in behalf of Ms. Lewinsky?

A. I don't think so. I think not. I think I wanted to see her before I made any calls.

Q. And so if they were not before, after you met with her, you made some calls on December 11th?

A. I—I believe that's correct.

Q. And you called Mr. Richard Halperin of McAndrews & Forbes?

A. That's right.

Q. You called Mr. Peter—

A. Georgescu.

Q. —Georgescu. And he is with what company?

A. He is chairman and chief executive officer of Young & Rubicam, a leading advertising agency on Madison Avenue.

Q. And did you make one other call?

A. Yes. I called Ursie Fairbairn, who runs Human Resources at American Express, at the American Express Company, where I am the senior director.

Q. All right. And so you made three calls on December 11th. You believe that they were after you met with Ms. Lewinsky—

A. I doubt very seriously if I would have made the calls in advance of meeting her.

Q. And why is that?

A. You sort of have to know what you're talking about, who you're talking about.

Q. And what did you basically communicate to each of these officials in behalf of Ms. Lewinsky?

A. I essentially said that you're going to hear from Ms. Lewinsky, and I hope that you will afford her an opportunity to come in and be interviewed and look favorably upon her if she meets your qualifications and your needs for work.

Q. Okay. And at what level did you try to communicate this information?

A. By—what do you mean by "what level"?

Q. In the company that you were calling, did you call the chairman of human resources, did you call the CEO—who did you call, or what level were you seeking to talk to?

A. Richard Halperin is sort of the utility man; he does everything at McAndrews & Forbes. He is very close to the chairman, he is very close to Mr. Gittis. And so at McAndrews & Forbes, I called Halperin.

As I said to you, and as my grand jury testimony shows, I called Young & Rubicam, Peter Georgescu as its chairman and CEO. I have had a long-term relationship with Young & Rubicam going back to three of its CEOs, the first being Edward Ney, who was chairman of Young & Rubicam when I was head of the United Negro College Fund, and it was during that time that we developed the great theme, "A mind is a terrible thing to waste." So I have had a long-term relationship with Young & Rubicam and with Peter Georgescu, so I called the chairman in that instance.

At American Express, I called Ms. Ursie Fairbairn who is, as I said before, in charge of Human Resources.

So that is the level—in one instance, the chairman; in one instance a utilitarian person; and in another instance, the head of the Human Resources Department.

Q. And the utilitarian connection, Mr. Richard Halperin, was sort of an assistant to Mr. Ron Perelman?

A. That's correct. He's a lawyer.

Q. Now, going to your meeting on December 11th with Ms. Lewinsky, about how long of a meeting was that?

A. I don't—I don't remember. You have a record of it, Congressman.

Q. And actually, I think you've testified it was about 15 to 20 minutes, but don't hold me to that, either.

During the course of the meeting with Ms. Lewinsky, what did you learn about her?

A. Uh, enthusiastic, quite taken with herself and her experience, uh, bubbly, effervescent, bouncy, confident, uh—actually, I sort of had the same impression that you House Managers had of her when you met with her. You came out and said she was impressive, and so we come out about the same place.

Q. And did she relate to you the fact that she liked being an intern because it put her close to the President?

A. I have never seen a White House intern who did not like being a White House intern, and so her enthusiasm for being a White House intern was about like the enthusiasm of White House interns—they liked it.

She was not happy about not being there anymore—she did not like being at the Defense Department—and I think she actually had some desire to go back. But when she actually talked to me, she wanted to go to New York for a job in the private sector, and she thought that I could be helpful in that process.

Q. Did she make reference to someone in the White House being uncomfortable when she was an intern, and she thought that people did not want her there?

A. She felt unwanted—there is no question about that. As to who did not want her there and why they did not want her there, that was not my business.

Q. And she related that—

A. She talked about it.

Q. —experience or feeling to you?

A. Yes.

Q. Now, your meeting with Ms. Lewinsky was on December 11th, and I believe that Ms. Lewinsky has testified that she met with the President on December 5—excuse me, on December 6—at the White House and complained that her job search was not going anywhere, and the President then talked to Mr. Jordan.

Do you recall the President talking to you about that after that meeting?

A. I do not have a specific recollection of the President saying to me anything about having met with Ms. Lewinsky. The President has never told me that he met with Ms. Lewinsky, as best as I can recollect. I—I am aware that she was in a state of anxiety about going to work. She was in a state of anxiety in addition because her lease at Watergate, at the Watergate, was to expire December 31st. And there was a part of Ms. Lewinsky, I think, that thought that because she was coming to me, that she could come today and that she would have a job tomorrow. That is not an unusual misapprehension, and it's not limited to White House interns.

Q. I mentioned her meeting with the President on the same day, December 6th. I believe the record shows the President met with his lawyers and learned that Ms. Lewinsky was on the Jones witness list. Now, did you subsequently meet with the President on the next day, December 7th?

A. I may have met with the President. I'd have to—I mean, I'd have to look. I'd have to look. I don't know whether I did or not.

Q. If you would like to confer—I believe the record shows that, but I'd like to establish that through your testimony.

MS. WALDEN: Yes.

THE WITNESS: Yes.

BY MR. HUTCHINSON:

Q. All right. So you met with the President on December 7th. And was it the next day after that, December 8th, that Ms. Lewinsky called to set up the job meeting with you on December 11th?

A. I believe that is correct.

Q. And sometime after your meeting on December 11th with Ms. Lewinsky, did you have another conversation with the President?

A. Uh, you do understand that conversations between me and the President, uh, was not an unusual circumstance.

Q. And I understand that—

A. All right.

Q. —and so let me be more specific. I believe your previous testimony has been that sometime after the 11th, you spoke with the President about Ms. Lewinsky.

A. I stand on that testimony.

Q. All right. And so there's two conversations after the witness list came out—one that you had with the President on December 7th, and then a subsequent conversation with him after you met with Ms. Lewinsky on the 11th.

Now, in your subsequent conversation after the 11th, did you discuss with the President of the United States Monica Lewinsky, and if so, can you tell us what that discussion was?

A. If there was a discussion subsequent to Monica Lewinsky's visit to me on December the 11th with the President of the United States, it was about the job search.

Q. All right. And during that, did he indicate that he knew about the fact that she had lost her job in the White House, and she wanted to get a job in New York?

A. He was aware that—he was obviously aware that she had lost her job in the White House, because she was working at the Pentagon. He was also aware that she wanted to work in New York, in the private sector, and understood that that is why she was having conversations with me. There is no doubt about that.

Q. And he thanked you for helping her?

A. There's no question about that, either.

Q. And on either of these conversations that I've referenced that you had with the President after the witness list came out, your conversation on December 7th, and your conversation sometime after the 11th, did the President tell you that Ms. Monica Lewinsky was on the witness list in the Jones case?

A. He did not.

Q. And did you consider this information to be important in your efforts to be helpful to Ms. Lewinsky?

A. I never thought about it.

Q. Was there a time that you became aware that Ms. Lewinsky had been subpoenaed to give a deposition in the Jones versus Clinton case?

A. On December 19th when she came to my office with the subpoena—I think it's the 19th.

Q. That's right. Now, you indicated you never thought about it, because of course, at that point, you didn't know that she was on the witness list, according to your testimony.

A. [Nodding head up and down.]

Q. Now, you said that she came to see you on December 19th—I'm sorry. I've been informed you didn't respond out loud, so—

A. Well, if you'd ask the question, I'd be happy to respond.

Q. I was afraid you would ask me to ask the question again.

Well, let's go to the December 19th meeting.

A. Fine.

Q. How did it come about that you met with Ms. Lewinsky on December 19th?

A. Ms. Lewinsky called me in a rather high emotional state and said that she needed to see me, and she came to see me.

Q. And she called you on the telephone on December 19th, in which she indicated she had received a subpoena?

A. That's right, and was emotional about it and asked, and so I said come over.

Q. And what was your reaction to her having received a subpoena in the Jones case?

A. Surprise, number one; number two, quite taken with her emotional state.

Q. And did you see that she had a problem?

A. She obviously had a problem—she thought—

THE VIDEOGRAPHER: We have to go off the record.

SENATOR THOMPSON: Off the record.

[Recess due to power failure.]

THE VIDEOGRAPHER: We're going back on the record at 10:49 a.m.

SENATOR THOMPSON: All right, let the record reflect that we've been down for 20 to 25 minutes due to a power failure, but we are ready to proceed now, counsel.

MR. HUTCHINSON: Thank you, Senator Thompson.

And Mr. Jordan, before we go back to my line of questioning, I have been informed that we have that question in which we did not get an audible response, and so I'm going to ask the court reporter to read that question back.

[The court reporter read back the requested portion of the record.]

THE WITNESS: I did not know that she was on the witness list, Congressman. And let me say parenthetically here that our side had nothing to do with the power outage.

[Laughter.]

THE WITNESS: As desirable as that may have been.

[Laughter.]

BY MR. HUTCHINSON:

Q. Thank you, Mr. Jordan. And again, we're talking about the fact you never thought about the President not telling you that Ms. Lewinsky was on the witness list because you didn't know it at the time.

A. I—I did not know it.

Q. All right. Now, before we go back to December 19th, I've also been informed that I've been neglectful, and sometimes you will give a nod of the head, and I've not asked you to give an audible response. So I'm going to try to be mindful of that, but at the same time, Mr. Jordan, if you can try to give an audible response to a question rather than what we sometimes do in private conversation, which is a nod of the head. Fair enough?

A. I'm happy to comply.

Q. Now, we're talking about December 19th, that you had received a call from Monica Lewinsky; she had been subpoenaed in the Jones case. She was upset. You said, Come to my office.

Now, when she got to the office, I asked you, actually, before that, what was your reaction to her having this subpoena, and she had a problem because of the subpoena.

A. Yes.

Q. And I believe you previously indicated that any time a witness gets a subpoena, they've got a problem that they would likely need legal assistance.

A. That's been my experience.

Q. And in fact she did subsequently come to see you at the office on that December 19th, is that correct?

A. That's correct.

Q. And what happened at that meeting in your office with Ms. Lewinsky on the 19th?

A. She, uh, as I said, was quite emotional. She was—she was disturbed about the subpoena. She was disturbed about not having, in her words, heard from the President or talked to the President.

It was also in that meeting that it became clear to me that the—that her eyes were wide and that she, uh, that—let me—for lack of a better way to put it, that she had a "thing" for the President.

Q. And how long was that meeting?

A. I don't know, uh, but it's in the record.

MR. HUNDLEY: You testified 45 minutes.

THE WITNESS: Forty-five minutes. Thank you.

MR. HUTCHINSON: Thank you.

MR. HUNDLEY: Is that okay if I—

MR. HUTCHINSON: That's all right, and that's helpful, Mr. Hundley.

MR. HUNDLEY: Thank you. I'm trying to be helpful.

BY MR. HUTCHINSON:

Q. And during this meeting, did she in fact show you the subpoena that she had received in the Jones litigation?

A. I'm sure she showed me the subpoena.

Q. And the subpoena that was presented to you asked her to give a deposition, is that correct?

A. As I recollect.

Q. But did it also ask Ms. Lewinsky or direct her to produce certain documents and tangible objects?

A. I think, if I'm correct in my recollection, it asked that she produce gifts.

Q. Gifts, and some of those gifts were specifically enumerated.

A. I don't remember that. I do remember gifts.

Q. And did you discuss any of the items requested under the subpoena?

A. I did not. What I said to her was that she needed counsel.

Q. Now, just to help you in reference to your previous grand jury testimony of March 3, '98—and if you would like to refer to that, page 121, but I believe it was your testimony that you asked her if there had been any gifts after you looked at the subpoena.

A. I may have done that, and if I—if that's in my testimony, I stand by it.

Q. And did she—from your conversation with her, did you determine that in your opinion, there was a fascination on her part with the President?

A. No question about that.

Q. And I think you previously described it that she had a "thing" for the President?

A. "Thing," yes.

Q. And did you make any specific inquiry as to the nature of the relationship that she had with the President?

A. Yes. At some point during that conversation, I asked her directly if she had had sexual relationships with the President.

Q. And is this not an extraordinary question to ask a 24-year-old intern, whether she had sexual relations with the President of the United States?

A. Not if you see—not if you had witnessed her emotional state and this "thing," as I say. It was not.

Q. And her emotional state and what she expressed to you about her feelings for the President is what prompted you to ask that question?

A. That, plus the question of whether or not the President at the end of his term would leave the First Lady; and that was alarming and stunning to me.

Q. And she related that question to you in that meeting on December 19th?

A. That's correct.

Q. Now, going back to the question in which you asked her if she had had a sexual relationship with the President, what was her response?

A. No.

Q. And I'm sure that that was not an idle question on your part, and I presume that you needed to know the answer for some purpose.

A. I wanted to know the answer based on what I had seen in her expression; obviously, based on the fact that this was a subpoena about her relationship with the President.

Q. And so you felt like you needed to know the answer to that question to determine how you were going to handle the situation?

A. No. I thought it was a factual data that I needed to know, and I asked the question.

Q. And why did you need to know the answer to that question?

A. I am referring this lady, Ms. Lewinsky, to various companies for jobs, and it seemed to me that it was important for me to know in that process whether or not there had been something going on with the President based on what I saw and based on what I heard.

Q. And also based upon your years of experience—I mean your—

A. I don't understand that question.

Q. Well, you have children?

A. I have four children; six grandchildren.

Q. And you've raised kids, you've had a lot of experiences in life, and do you not apply that knowledge and experience and wisdom to circumstances such as this?

A. Yes. I've been around, and I've seen young people, both men and women, overly excited about older, mature, successful individuals, yes.

Q. Now, let me just go back as to what signals that you might have had at this particular point that there was a sexual relationship between Ms. Lewinsky and the President. Was one of those the fact that she indicated that she had a fascination with the President?

A. Yes.

Q. And did she relate that "He doesn't call me enough"?

A. Yes.

Q. And was the fact that there was an exchange of gifts a factor in your consideration?

A. Well, I was not aware that there had been an exchange of gifts. I thought it a tad unusual that there would be an exchange of gifts, uh, but it was just clear that there was a fixation by this young woman on the President of the United States.

Q. And was it also a factor that she had been issued a subpoena in a case that was rooted in sexual harassment?

A. Well, it certainly helped.

Q. And that was an ingredient that you factored in and decided this is a question that needed to be asked?

A. There's no question about that.

Q. Now, heretofore, the questions or the discussions with Ms. Lewinsky had simply been about a job?

A. Had been about a job.

Q. And I think you indicated that you didn't have to be an Einstein to know that this was a question that needed to be asked after what you learned on this meeting?

A. Yes, based on my own judgment, that is correct.

Q. Now, at this point, you're assisting the President in obtaining a job for a former intern, Monica Lewinsky?

A. Right.

Q. It comes to your attention from Ms. Lewinsky that she has a subpoena in a civil rights case against the President. And did this make you consider whether it was appropriate for you to continue seeking a job for Ms. Lewinsky?

A. Never gave it a thought.

Q. Despite the fact that you were seeking the job for Ms. Lewinsky at the request of the President when she is under subpoena in a case adverse to the President?

A. I—I did not give it a thought. I had committed that I was going to help her, and I was going to—and I kept my commitment.

Q. And so, however she would have answered that question, you would have still prevailed upon your friends in industry to get a job for her?

A. Congressman, that is a hypothetical question, and I'm not going to answer a hypothetical question.

Q. Well, I thought you had answered it before, but if—so you don't know whether it would have made a difference or not, then?

A. I asked her whether or not she had had sexual relationships with the President. Ms. Lewinsky told me no.

MR. HUNDLEY: I'd just like to interject. My recollection, Congressman, is that in the grand jury, he gave basically the same answer, that it was a hypothetical question, and that he really didn't know what he would have done had the answer been different. You could double-check it if you want, but I'm sure I'm right.

BY MR. HUTCHINSON:

Q. Okay, I'm not asking you a hypothetical question. I want to ask it in this phrase, in this way. Did her answer make you consider whether it was appropriate for you to continue seeking a job for Ms. Lewinsky at the request of the President?

A. I did not see any reason why I should not continue to help her in her job search.

Q. Now, was the fact that she was under subpoena important information to you?

A. It was additional information, certainly.

Q. If you were trying to get Ms. Lewinsky a job, did you expect her to tell you if she had any reason to believe she might be a witness in the Jones case?

A. She did in fact tell me by showing me the subpoena. I had no expectations one way or the other.

Q. Well, I refer you to your grand jury testimony of March 3, '98 at page 96. Do you recall the answer: "I just think that as a matter of openness and full disclosure that she would have done that."

A. And she did.

Q. Precisely. She disclosed to you, of course, when she received the subpoena, and that's information that you expected to know and to be disclosed to you?

A. Fine.

Q. Is—

A. Yes. Fine.

Q. And in fact, if Ms. Currie—I'm talking about Betty Currie—if she had known that Ms. Lewinsky was under subpoena, you would have expected her to tell you that information as well since you were seeking employment for Ms. Lewinsky?

A. Well, it would have been fine had she told me. I do make a distinction between being a witness on the one hand and being a defendant in some sort of criminal action on the other. She was a witness in the civil case, and I don't believe witnesses in civil cases don't have a right for—to employment.

Q. Okay. I refer you to page 95 of your grand jury testimony, in which you said: "I believe that had Ms. Currie known, that she would have told me."

And the next question: "Let me ask the question again, though. Would you have expected her to tell you if she knew?"

And do you recall your answer?

A. I don't.

Q. "Yes, sure."

A. I stand by that answer.

Q. And so it's your testimony that if Ms. Currie had known that Ms. Lewinsky was under subpoena, you would have expected her to tell you that information?

A. It would have been helpful.

Q. And likewise, would you have expected the President to tell you if he had any reason to believe that Ms. Lewinsky would be called as a witness in the Paula Jones case?

A. That would have been helpful, too.

Q. And that was your expectation, that he would have done that in your conversations?

A. It—it would certainly have been helpful, but it would not have changed my mind.

Q. Well, being helpful and that being your expectation is a little bit different, and so I want to go back again to your testimony on March 3, page 95, when the question is asked to you—question: "If the President had any reason to believe that Ms. Lewinsky could be called a witness in the Paula Jones case, would you have expected him to tell you that when you spoke with him between the 11th and the 19th about her?"

And your answer: "And I think he would have."

A. My answer was yes in the grand jury testimony, and my answer is yes today.

Q. All right. So it would have been helpful, and it was something you would have expected?

A. Yes.

Q. And yet, according to your testimony, the President did not so advise you of that fact in the conversations that he had with you on December 7th and December 11th after he learned that Ms. Lewinsky was on the witness list?

A. As I testified—

MR. KENDALL: Objection. Misstates the record with regard to December 11th.

MR. HUTCHINSON: I—I will restate the question. I believe it accurately reflects the record, and I'll ask the question.

BY MR. HUTCHINSON:

Q. And yet, according to your testimony, the President did not so advise you of the fact that Ms. Lewinsky was on the witness list despite the fact that he had conversations with you on two occasions, on December 7th and December 11th?

A. I have no recollection of the President telling me about the witness list.

Q. And during this meeting with Ms. Lewinsky on the 11th, did you take some action as a result of what she told you?

A. On the 11th or the 18th?
Q. Excuse me. I'm sorry. Let me go to the 19th.
A. Nineteenth.
Q. Thank you for that correction.
Did you refer her to an attorney?
A. Yes, I did.
Q. Okay, and who was the attorney that you referred her to?
A. Frank Carter, a very able local attorney here.
Q. And did you give her two or three attorneys to select from, or did you just give her one recommendation?
A. I made a recommendation of Frank Carter. That was the only recommendation.
Q. Now, let me go to I believe it's the next three exhibits that are in front of you, if you'd just turn that first page, and I believe they are marked 29, 31, 32 and 33. And these are, I believe, exhibits that you have seen before and are summaries and documents relating to telephone conversations on this particular day of December 19th.
[Witness perusing documents.]
SENATOR DODD: How are these going to be marked—as Jordan Deposition Exhibits—
MR. HUTCHINSON: These should be marked as Exhibits 2, 3, and 4.
SENATOR DODD: Okay.
MR. KENDALL: Excuse me, Mr. Manager. Are you offering these in evidence?
MR. HUTCHINSON: Not at this time.
I guess it's 2, 3, 4 and 5.
SENATOR THOMPSON: Are we referring to the next four exhibits in the package here?
MR. HUTCHINSON: Yes, sir.
SENATOR THOMPSON: Well, we'll just—identify them one at a time, and we'll—
MR. HUTCHINSON: All right.
BY MR. HUTCHINSON:
Q. Let's go to Exhibit 29 as it's marked, but for our purpose, we're going to refer to it as Deposition Exhibit 2.
SENATOR THOMPSON: All right. For identification for right now, we'll call that Jordan Exhibit Number 2 for identification, which is marked as, I assume, Grand Jury Exhibit Number 29.
[Jordan Deposition Exhibit No. 2 marked for identification.]
BY MR. HUTCHINSON:
Q. And from this record, would you agree that you received a call from Ms. Lewinsky at 1:47 p.m.?
A. For 11 seconds.
Q. All right. And subsequent to that, you placed a call to talk to the President at 3:51 p.m. and talked to Deborah Schiff?
A. Yes.
Q. And what was the purpose of that call to Deborah Schiff?
A. I—I'm certain that I did not call Deborah Schiff. I had no reason to call Deborah Schiff. My suspicion was that if I in fact called 1414, that somehow Deborah Schiff was answering the telephone.
Q. Were you trying to get hold of the President?
A. I think maybe I was.
Q. All right. And then, subsequent to that, Ms. Lewinsky arrived in your office at 4:47 p.m.—and I believe that would be reflected on Exhibit 3—excuse me—Exhibit 4.
MR. HUNDLEY: Four.
THE WITNESS: Yes.
BY MR. HUTCHINSON:
Q. And does it also reflect, going back to the call records, that you talked to the President during the course of your meeting with Ms. Lewinsky at approximately 5:01 p.m.?
A. I beg your pardon?
MR. HUTCHINSON: This would be Exhibit 5.
SENATOR THOMPSON: All right. Let's mark these for identification purposes.
We have already identified Deposition Exhibit Number 29 as Exhibit Number 2 for identification in Mr. Jordan's deposition.
The next one would be Grand Jury Exhibit Number 31, and we will mark that as Exhibit Number 3 for identification purposes. Following that will be Grand Jury Exhibit Number 32, that we will identify as Exhibit Number 4 to Mr. Jordan's deposition for identification purposes; and Grand Jury Exhibit Number 33 will be Exhibit Number 5 to Mr. Jordan's deposition for identification purposes.

Now, do we need to go any further at this time?
MR. HUTCHINSON: No. Thank you.
SENATOR THOMPSON: All right.
[Jordan Deposition Exhibit Nos. 3, 4 and 5 marked for identification.]
BY MR. HUTCHINSON:
Q. Mr. Jordan—
A. Yes.
Q. —under Exhibit—
A. Yes.
Q. —according to these records, specifically Exhibit 5, does it reflect that you talked to the President during the course of your meeting with Ms. Lewinsky at approximately 5:01 p.m.?
MR. KENDALL: Object to the form of the question.
MR. HUTCHINSON: You may answer.
THE WITNESS: I'm confused.
MR. HUTCHINSON: There's an objection as to the form of the question.
THE WITNESS: Oh.
SENATOR THOMPSON: We can resolve it.
MR. KENDALL: The question was do these records indicate this. If he offers Number 2, I'm going to object to it. It's not the best evidence. It's a chart. I don't know who prepared it—
SENATOR THOMPSON: He's referring to 5 now, I believe, isn't he?
MR. HUTCHINSON: Yes.
SENATOR THOMPSON: I believe this had to do with 5.
MR. HUTCHINSON: All right.
THE WITNESS: Would you ask your question?
BY MR. HUTCHINSON:
Q. Mr. Jordan, I'm simply trying to establish, and using Exhibit 5 to refresh your recollection—
MR. KENDALL: I withdraw the objection, I withdraw the objection.
SENATOR THOMPSON: All right, sir; very fine.
MR. HUTCHINSON: Thank you.
BY MR. HUTCHINSON:
Q. —that this record, Exhibit 5, reflects that you talked to the President during the course of your meeting with Ms. Lewinsky at approximately 5:01 p.m.
A. Yes. I—I have never had a conversation with the President while Ms. Lewinsky was present. The wave-in sheet from my office said that she came in at 5:47—
Q. Four forty-seven.
A. —4:47. She may have been in the reception area, or she may have been outside my office, but Ms. Lewinsky was not in my office during the time that I had a conversation with the President.
Q. And the other alternative would be that she came into your office, and then you excused her while you received a call from the President?
A. That's a possibility, too—
Q. All right.
A. —but she was not present in my office proper during the time that I was having a conversation with the President.
Q. Absolutely, and that is clear.
Now, because we got a little bogged down in the records, let me just go back for a moment. Is it your understanding, based upon the records and recollection, that you received a call from Ms. Lewinsky about 1:47; you talked to Deborah Schiff trying to get hold of the President about 3:51 that afternoon; Ms. Lewinsky arrived at about 4:47 p.m.
A. Yes.
Q. Am I correct so far?
A. Yes.
Q. And then you received a call from the President at about 5:01 p.m.?
A. That's correct.
MR. HUTCHINSON: I want to say "Your Honor"—I've wanted to do this all day, Senator—I would offer these Exhibits 2, 3, 4 and 5 at this time.
MR. KENDALL: I would object to the admission of Exhibit Number 2.
SENATOR THOMPSON: Mr. Hutchinson, could you identify what this exhibit is from?
MR. HUTCHINSON: Well, this exhibit is a summary exhibited based upon the original records that establish this. Now, we've established it clearly through the testimony, so it's not of earth-shattering significance whether this is in the record or not, because the witness has established it.

SENATOR THOMPSON: All right. But this is a compilation of what you contend—

MR. HUTCHINSON: Yes.

SENATOR THOMPSON: —is otherwise in the record?

MR. HUTCHINSON: Yes.

SENATOR THOMPSON: Counsel, do we really have a problem with that?

MR. KENDALL: Senator Thompson, I don't know who prepared this or what records it's based on. I have not objected to any of the original records, and I'll continue my objection.

SENATOR THOMPSON: I think in light of that we will sustain it, if Mr. Hutchinson thinks it's otherwise in the record anyway, and not make an issue out of that.

So we will, then, make as a part of the record Exhibits Numbers 3, 4 and 5 that have previously been introduced for identification purposes; they will now be made a part of the record.

MR. HUTCHINSON: Thank you, Senator.

[Jordan Deposition Exhibit Nos. 3, 4 and 5 received in evidence.]

BY MR. HUTCHINSON:

Q. Now, Mr. Jordan, you indicated you had this conversation with the President at about 5:01 p.m. out of the presence of Ms. Lewinsky. Now, during this conversation with the President, what did you tell the President in that conversation?

A. That Lewinsky—I'm sure I told him that Ms. Lewinsky was in my office, in the reception area, that she had a subpoena and that I was going to visit with her.

Q. And did you advise the President as well that you were going to recommend Frank Carter as an attorney?

A. I may have.

Q. And why was it necessary to tell the President these facts?

A. I don't know why it was not unnecessary to tell him these facts. I was keeping him informed about what was going on, and so I told him.

Q. Why did you make the judgment that you should call the President and advise him of these facts?

A. I just thought he ought to know. He was interested it—he was obviously interested in it—and I felt some responsibility to tell him, and I did.

Q. All right. And what was the President's response?

A. He said thank you.

Q. Subsequent to your conversation with the President about Monica Lewinsky, did you advise Ms. Lewinsky of this conversation with the President?

A. I doubt it.

Q. And if she indicates that she was not aware of that conversation, would you dispute her testimony in that regard?

A. I would not.

Q. And you say that you doubt it. Was there a reason that you would not disclose to her the fact that you talked to the President when she was the subject of that conversation?

A. No. I—I didn't feel any particular obligation to tell her or not to tell her, but I did not tell her.

Q. Now, we have discussed to a limited extent the gifts that were mentioned in the subpoena in this discussion that you had with Ms. Lewinsky. Did she in fact tell you about the gifts she had received from the President?

A. I think she told me that she had received gifts from the President.

Q. Did she also indicate that there had been an exchange of gifts?

A. She did.

Q. And did you think that it was somewhat unusual that there had been an exchange of gifts?

A. Uh, a tad unusual, I thought.

Q. These—

A. Which again occasioned the question.

Q. Pardon?

A. Which again occasioned the ultimate question.

Q. On—on whether there was a sexual relationship?

A. That is correct.

Q. And so that was a significant fact in determining whether that question should be asked?

A. It was an additional fact.

Q. Now, the subpoena also references "documents constituting or containing communications between you"—which would have been Ms. Lewinsky under the subpoena—"and the Defendant Clinton, including letters, cards, notes, et cetera."

Did you ask Ms. Lewinsky at all whether there were any kinds of cards or communications between them?

A. Uh, I did not, but she may have volunteered that.

Q. And did she tell you about telephone conversations with the President?

A. She did tell me that she and the President talked on the telephone.

Q. And did she express it in a way that it was frustrating because the President didn't call her sufficiently?

A. Well, that—that is correct, and she was disappointed, uh, and disapproving of the fact that she was not hearing from the President of the United States on a regular basis.

Q. During this conversation with Ms. Lewinsky, she also made reference to the First Lady?

A. Yes.

Q. And that was another question of concern when she asked if you thought that the President would leave the First Lady at the end of his term?

A. That is correct.

Q. And what was your reaction to this statement?

A. My reaction to the statement after I got over it was that—no way.

Q. Did it send off alarm bells in your mind as to her relationship with the President?

A. I think it's safe to say that she was not happy.

Q. You're speaking of Ms. Lewinsky?

A. That's the only person we're talking about, Congressman.

Q. Now, based upon all of this, was it your conclusion the subpoena meant trouble?

A. Beg your pardon?

Q. Based upon all of these facts and your conversation with Ms. Lewinsky, was it your conclusion that the subpoena meant trouble?

A. Well, I always, based on my experience with the grand jury, believe that subpoenas are trouble.

Q. I think you've used the language, "ipso facto" meant trouble?

A. Yes, yes, right.

Q. Now, subsequent to your meeting with Ms. Lewinsky on this occasion, did you in fact set up an appointment with Mr. Frank Carter?

A. Yes—for the 22nd, I believe.

Q. Which I believe would have been the first part of the next week?

A. That's right.

Q. And still on December 19th, after your meeting with Ms. Lewinsky, did you subsequently see the President of the United States later that evening?

A. I did.

Q. And is this when you went to the White House and saw the President?

A. Yes.

Q. At the time that Ms. Lewinsky came to see you on December 19th, did you have any plans to attend any social function at the White House that evening?

A. I did not.

Q. And in fact there was a social invitation that you had at the White House that you declined?

A. I had—I had declined it; that's right.

Q. And subsequent to Ms. Lewinsky visiting you, did you change your mind and go see the President that evening?

A. After the—a social engagement that Mrs. Jordan and I had, we went to the White House for two reasons. We went to the White House to see some friends who were there, two of whom were staying in the White House; and secondly, I wanted to have a conversation with the President.

Q. And this conversation that you wanted to have with the President was one that you wanted to have with him alone?

A. That is correct.

Q. And did you let him know in advance that you were coming and wanted to talk to him?

A. I told him I would see him sometime that night after dinner.

Q. Did you tell him why you wanted to see him?

A. No.

Q. Now, was this—once you told him that you wanted to see him, did it occur the same time that you talked to him while Ms. Lewinsky was waiting outside?

A. It could be. I made it clear that I would come by after dinner, and he said fine.

Q. Now, let me backtrack for just a moment, because whenever you talked to the President, Ms. Lewinsky was not inside the room—

A. That's correct.

Q. —and therefore, you did not know the details about her questions on the President might leave the First Lady and those questions that set off all of these alarm bells.

A. [Nodding head up and down.]

Q. And so you were having—is the answer yes?

A. That's correct.

Q. And so you were having this discussion with the President not knowing the extent of Ms. Lewinsky's fixation?

A. Uh—

Q. Is that correct?

A. Correct.

Q. And, regardless, you wanted to see the President that night, and so you went to see him. And was he expecting you?

A. I believe he was.

Q. And did you have a conversation with him alone?

A. I did.

Q. No one else around?

A. No one else around.

Q. And I know that's a redundant question.

A. It's okay.

Q. Now, would you describe your conversation with the President?

A. We were upstairs, uh, in the White House. Mrs. Jordan—we came in by way of the Southwest Gate into the Diplomatic Entrance—we left the car there. I took the elevator up to the residence, and Mrs. Jordan went and visited at the party. And the President was already upstairs—I had ascertained that from the usher—and I went up, and I raised with him the whole question of Monica Lewinsky and asked him directly if he had had sexual relations with Monica Lewinsky, and the President said, "No, never."

Q. All right. Now, during that conversation, did you tell the President again that Monica Lewinsky had been subpoenaed?

A. Well, we had established that.

Q. All right. And did you tell him that you were concerned about her fascination?

A. I did.

Q. And did you describe her as being emotional in your meeting that day?

A. I did.

Q. And did you relate to the President that Ms. Lewinsky asked about whether he was going to leave the First Lady at the end of the term?

A. I did.

Q. And as—and then, you concluded that with the question as to whether he had had sexual relations with Ms. Lewinsky?

A. And he said he had not, and I was satisfied—end of conversation.

Q. Now, once again, just as I asked the question in reference to Ms. Lewinsky, it appears to me that this is an extraordinary question to ask the President of the United States. What led you to ask this question to the President?

A. Well, first of all, I'm asking the question of my friend who happens to be the President of the United States.

Q. And did you expect your friend, the President of the United States, to give you a truthful answer?

A. I did.

Q. Did you rely upon the President's answer in your decision to continue your efforts to seek Ms. Lewinsky a job?

A. I believed him, and I continued to do what I had been asked to do.

Q. Well, my question was more did you rely upon the President's answer in your decision to continue your efforts to seek Ms. Lewinsky a job.

A. I did not rely on his answer. I was going to pursue the job in any event. But I got the answer to the question that I had asked Ms. Lewinsky earlier from her, and I got the answer from him that night as to the sexual relationships, and he said no.

Q. It would appear to me that there's two options. One, you asked the question in terms of idle conversation, and that does not seem logical in view of the fact that you made a point to go and visit the President about this alone.

A. Yes. I never said that—I never talked about options. I told you I went to ask him that question.

Q. Well, was it idle conversation, or was there a purpose in you asking him that question?

A. It obviously, Congressman, was not idle conversation.

Q. All right.

A. For him nor for me.

Q. There was a purpose in it—and would you describe it as being important, the question that you asked to him?

A. I wanted to satisfy myself, based on my visit with her, that there had been no sexual relationships, and he said no, as she had said no.

Q. And why was it important to you to satisfy yourself on that particular point?

A. I had seen this young lady, and I had seen her reaction, uh, and it raised a presumption, uh, and I wanted to satisfy myself, as I had done with her, that there had been no sexual relationship between them.

Q. If you had—

A. And I did satisfy myself.

Q. And if you had—well, let me rephrase it. If you believed the presumption, or if you had evidence that Ms. Lewinsky did have sexual relations with the President, would this have affected your decision to act in the President's interest in locating her a job when she had been subpoenaed in a case adverse to the President?

A. I do not think it would have affected my decision.

Q. Now, you mentioned that you set up an appointment for Ms. Lewinsky at the office of Frank Carter for December 22nd.

A. Right.

Q. Prior to that appointment with Mr. Carter, did Ms. Lewinsky come to see you in your office?

A. I took Ms. Lewinsky from my office, in my Akin Gump, chauffeur-driven car, to Frank Carter's office.

Q. And when she arrived at your office, did you have a discussion with her?

A. I think I got my coat, she got her—she had on her coat—and we left.

Q. While in your office before going to see Mr. Carter, did Ms. Lewinsky ask about her job?

A. Every conversation that I had with Ms. Lewinsky had at some point to do with pending employment.

Q. And I take that as a "yes" answer, but I would also refer you to page 184 of your previous testimony in which that answer was "yes."

A. Yes.

Q. And so prior to going to see Mr. Carter, you met with Ms. Lewinsky and—where she asked about her job?

A. Well, as I'm putting on my coat, I mean, we did not sit down and have a conference. We had an appointment.

Q. Now, you last testified before the grand jury in June of 1998, and you have not had the opportunity to address some issues that Ms. Lewinsky raised when she testified before the grand jury in August of 1998, and I would like to—there will be a number of questions as we go through this today relating to some things that she testified to, because it's important that we hear your responses to it, and so I'd like to ask you about a couple of these particular areas.

During this meeting—and you say it was a short meeting, that you really didn't sit down—but during this time, did Ms. Lewinsky ask if you had told the President that she had been subpoenaed in the Jones case?

A. She may have, and—and if she did, I answered yes.

Q. Even though you did not tell her about the conversation on December 19th that you had with the President in which you told the President she had been subpoenaed?

A. If she had asked, I would have told her. If she asked me on the 22nd, I answered yes.

Q. And did Ms. Lewinsky show you any gifts that she was bringing to Mr. Frank Carter?

A. Yeah—I'm not aware that Ms. Lewinsky showed me any gifts. I have no—I have no recollection of her having shown me gifts given her by the President. And my best recollection is that she came to my office, I got myself together, and that we left. I have no recollection of her showing me gifts given her by the President.

Q. Would you dispute if she in fact had gifts with her on that occasion?

A. I don't know whether she had gifts with her or not. I do have—I have no recollection of her showing me, saying, "This is a gift given me by the President of the United States."

Q. And if she testifies that she showed you the gifts she was bringing Mr. Carter, you would dispute that testimony?

A. I have not any recollection of her showing me any gifts.

Q. And I take that as not denying it—

MR. KENDALL: Objection to form.

BY MR. HUTCHINSON:

Q. —but that you have no recollection.

A. Uh, I don't know how else to say it to you, Mr. Congressman.

Q. Well—

A. I have no recollection of Ms. Lewinsky coming to my office and showing me gifts given her by the President of the United States.

Q. Let me go on. Did Ms. Lewinsky tell you that she and the President had had phone sex?

A. I think Ms.—I know Ms. Lewinsky told me about, uh, telephone conversations with the President. If Ms. Lewinsky had told me something about phone sex, I think I would have remembered that.

Q. And therefore, if she testifies that she told you that Ms. Lewinsky and the President had phone sex, then you'd simply deny her testimony in that regard?

A. I—

MR. KENDALL: Object to the form.

THE WITNESS: I have no recollection, Congressman, of Ms. Lewinsky telling me about phone sex—but given my age, I would probably have been interested in what that was all about.

SENATOR THOMPSON: We'll overrule the objection. It's a leading question, but I think that it will be permissible for these purposes.

MR. HUTCHINSON: It's my understanding, Senator, that under the Senate rule, that the witness would be considered an adverse witness.

SENATOR THOMPSON: That's correct.

BY MR. HUTCHINSON:

Q. Well, I don't mean to engage in disputes over fine points, but I guess—

A. Well, you obviously, Congressman, have Ms. Lewinsky saying one thing and me saying another. I stand by what I said.

Q. Which is that you have no recollection of that discussion taking place.

A. But I do think that I would have remembered it had it happened.

Q. All right. Now, after your brief encounter or meeting with Ms. Lewinsky in your office, did you take Ms. Lewinsky in your vehicle to Mr. Carter's office?

A. Yes.

Q. And when you arrived at Mr. Carter's office, did you meet with Mr. Carter in advance, while Ms. Lewinsky waited outside?

A. I said a brief hello to him. We talked about lunch. I never took off my coat. I did take off my hat, because it was inside. And I left them, and I got a piece of his candy.

Q. Now, I was looking at the testimony of Mr. Carter. Now, do you recall a meeting with Mr. Carter in his office while Ms. Lewinsky waited outside, even if it might have been a brief meeting?

A. Yes, I think maybe I went in. I just don't know—I was there for a very short time.

Q. Did you explain to Mr. Carter that you were seeking Ms. Lewinsky a job at the request of the President?

A. No, I did not, but I think he knew that.

Q. And why do you think he knew that?

A. I must have told him.

Q. So at some point, you believe that you told Mr. Carter that you were seeking Ms. Lewinsky a job at the request of the President?

A. I think I may have done that.

Q. Now, you have referred other clients to Mr. Carter during your course of practice here in Washington, D.C.?

A. Yes, I have.

Q. About how many have you referred to him?

A. Oh, I don't know. Maggie Williams is one client that I—I remember very definitely.

I like Frank Carter a lot. He's a very able young lawyer. He's a first-class person, a first-class lawyer, and he's one of my new acquaintances amongst lawyers in town, and I like being around him. We have lunch, and he's a friend.

Q. And is it true, though, that when you've referred other clients to Mr. Carter that you never personally delivered and presented that client to him in his office?

A. But I delivered Maggie Williams to him in my office. I had Maggie Williams to come to my office, and it was in my office that I introduced, uh, Maggie Williams to Mr. Carter, and she chose other counsel. I would have happily taken Maggie Williams to his office.

Q. But this is the only occasion that you took your Akin, Gump-chauffeured vehicle and delivered the client to Mr. Carter in his office?

A. It was.

Q. Now, we're not going to go through, probably to your relief, each day's phone calls, but is it safe to say that Ms. Lewinsky called you regularly, both keeping you

posted on her interviews and contacts, but also asking you what you knew about her job desires?

A. That is correct.

Q. And it is also true that during this process, you kept the President informed?

A. That, too, is correct.

Q. And did the President ever give you any other instruction other than to find Ms. Lewinsky a job in New York?

A. I do not view the President as giving me instructions. The President is a friend of mine, and I don't believe friends instruct friends. Our friendship is one of parity and equality.

Q. Let me rephrase it, and that's—

A. Thank you.

Q. That's a fair comment that you certainly made.

Did you ever receive any other request from the President in reference to your dealing with Monica Lewinsky other than the request to find her a job in New York?

A. That is correct.

MR. HUTCHINSON: I've been informed that there's a few minutes left on the tape. Do you want to break?

THE VIDEOGRAPHER: Yes.

SENATOR THOMPSON: All right. Let's take a 5-minute break at this point.

Also, if it's not objectionable to anyone, let's move a little closer to 1 o'clock, after all, for lunch, if that's okay. We have a conference that that will coincide with a little better, but for right now, let's take a 5-minute break.

SENATOR DODD: Just before we do, just to make it—and the admonition about these—these—this matter being in—confidential.

SENATOR THOMPSON: Right.

SENATOR DODD: And I'm going to restate that over and over again today, so that people understand the rules under which we're operating here, and this is confidential and no one is to reveal anything they hear, except to the people that was listed in Senator Thompson's opening remarks.

SENATOR THOMPSON: Absolutely.

We'll be in recess.

THE VIDEOGRAPHER: This marks the end of Videotape Number 1 in the deposition of Vernon E. Jordan, Jr. We are going off the record at 11:35 a.m.

[Recess.]

THE VIDEOGRAPHER: This marks the beginning of Videotape Number 2 in the deposition of Vernon E. Jordan, Jr. We are going back on the record at 11:49 a.m.

SENATOR THOMPSON: All right, Mr. Hutchinson, and you have consumed an hour and 40 minutes.

MR. HUTCHINSON: Thank you, Senator Thompson.

BY MR. HUTCHINSON:

Q. Mr. Jordan, I was reminded that the last question I asked you received an answer that I didn't, at least, understand, so I'm going to reask that question, and the question that I had asked, I believe, was: Did you ever receive any other request from the President in reference to your dealings with Ms. Lewinsky other than the request to find her a job in New York? And I think your answer was: That's correct. And that confuses me a little bit, so let me rephrase the question.

Did you ever receive—not rephrase it, but restate the question. Did you ever receive any other request from the President in reference to your dealings with Monica Lewinsky other than the request to find her a job in New York?

A. I did not.

Q. Now, let me go to December 31, 1997, in reference to another issue that Ms. Lewinsky has testified about in her August grand jury appearance and in which you have not had the opportunity to discuss in detail.

Ms. Lewinsky has testified that she met you for breakfast at the Park Hyatt—

MR. HUNDLEY: Excuse me. I think you misspoke yourself. You said '97.

MR. HUTCHINSON: This is '97, right?

MR. HUNDLEY: It is? I apologize.

MR. HUTCHINSON: Okay. Thank you, Mr. Hundley. The years are confusing, but I believe this is December 31, 1997.

BY MR. HUTCHINSON:

Q. And Ms. Lewinsky has testified that she met you for breakfast at the Park Hyatt, and even specifically as to what she had for breakfast on that particular occasion when she met with you and as to the conversation that she had.

And I want to show you, in order to hopefully refresh your recollection, an exhibit which I'm going to mark as the next exhibit number, which will be 6, I believe?

SENATOR THOMPSON: Yes. What—

MR. HUTCHINSON: And it's in the binder as Exhibit 42. It is not there, but it is in the binder as Exhibit 42.

SENATOR THOMPSON: Let's take a moment so everyone can refer to that.

BY MR. HUTCHINSON:

Q. Have you located that, Mr. Jordan?

A. [Nodding head up and down.]

Q. And this receipt, is this a receipt for a charge that you had at the Park Hyatt on December 31st?

A. That's an American Express receipt for breakfast.

Q. And is the date December 31st?

A. That is correct.

Q. And does it reflect the items that were consumed at that breakfast?

A. It reflects the items that were paid for at that breakfast.

[Laughter.]

BY MR. HUTCHINSON:

Q. Does it appear to you that this is a breakfast for two people?

A. The price suggests that it was a breakfast for two people.

Q. All right. And the fact that there's two coffees, there is one omelet, one English muffin, one hot cereal, and can you identify from that what you ordinarily eat at breakfast?

A. What I ordinarily eat at breakfast varies. This morning, it was fish and grits.

Q. All right. Now, Ms. Lewinsky in her testimony, I think, referenced as to what she ate, which I believe would be confirmed in this record.

Do you recall a meeting with Ms. Lewinsky at the Park Hyatt on December 31st of—

A. If you—

Q. —1997?

A. If you would refer to my testimony before the grand jury when asked about a breakfast with Ms. Lewinsky on December 31st, I testified that I did not have breakfast with Ms. Lewinsky on December 31st because I did not remember having had breakfast with Ms. Lewinsky on December 31st. It was not on my calendar. It was New Year's Eve. I have breakfast at the Park Hyatt Hotel three or four times a week if I am in town, and so I really did not remember having breakfast with Ms. Lewinsky. And that's an honest statement, I did not remember, and I told that to the grand jury.

It is clear, based on the evidence here, that I was at the Park Hyatt on December 31st. So I do not deny, despite my testimony before the grand jury, that on December 31st that I was there with Ms. Lewinsky, but I did testify before the grand jury that I did not remember having a breakfast with her on that date, and that was the truth.

My recollection has subsequently been refreshed, and—and so it is—it is undeniable that there was a breakfast in my usual breakfast place, in the corner at the Park Hyatt. I'm there all the time.

Q. All right. And so—and that would be with Ms. Lewinsky?

A. Yes.

Q. And so the—so your memory has been refreshed, and I appreciate the statement that you just made.

Let me go to that meeting with her and ask whether during this occasion that you met her for breakfast that there was a discussion about Ms. Linda Tripp and Ms. Lewinsky's relationship with her and conversations with her.

A. I also testified in my grand jury testimony that I never heard the name "Linda Tripp" until such time that I saw the Drudge Report. I did not have a conversation with Ms. Lewinsky at the breakfast at the Park Hyatt Hotel on December 31st about Linda Tripp. I never heard the name "Linda Tripp," knew nothing about Linda Tripp until I read the Drudge Report.

Q. All right. And do you recall a discussion with Ms. Lewinsky at the Park Hyatt on this occasion in which there were notes discussed that she had written to the President?

A. I am certain that Ms. Lewinsky talked to me about notes.

Q. On this occasion?

A. Yes.

Q. And would these have been notes that she would have sent to the President?

A. I think that there was—these notes had to do with correspondence between Ms. Lewinsky and the President.

Q. And would have she mentioned the retention or copies of some of that correspondence on her computer in her apartment?

A. She may have done that.

Q. And did you ask her a question, were these notes from the President to you?

A. I understood from our conversation that she and the President had correspondence that went back and forth.

Q. And did you make a statement to her, "Go home and make sure they're not there"?

A. Mr. Hutchinson, I'm a lawyer and I'm a loyal friend, but I'm not a fool, and the notion that I would suggest to anybody that they destroy anything just defies anything that I know about myself. So the notion that I said to her go home and destroy notes is ridiculous.

Q. Well, I appreciate that reminder of ethical responsibilities. It was—

A. No, it had nothing to do with ethics, as much as it's just good common sense, mother wit. You remember that in the South.

Q. And so—and let me read a statement that she made to the grand jury on August 6th, 1998. This is the testimony of Ms. Lewinsky, referring to a conversation with you at the Park Hyatt that, "She," referring to Linda Tripp, "was my friend. I didn't really trust her. I used to trust her, but I didn't trust her anymore, and I was a little bit concerned because she had spent the night at my home a few times, and I thought—I told Mr. Jordan. I said, 'Well, maybe she's heard some'—you know, I mean, maybe she saw some notes lying around, and Mr. Jordan said, 'Notes from the President to you?,' and I said, 'No. Notes from me to the President,' and he said, 'Go home and make sure they're not there.'"

A. And, Mr. Hutchinson, I'm saying to you that I never heard the name "Linda Tripp" until I read the Judge—Drudge Report.

Secondly, let me say to you that I, too, have read Ms. Lewinsky's testimony about that breakfast, and I can say to you, without fear of contradiction on my part, maybe on her part, that the notion that I told her to go home and destroy notes is just out of the question.

Q. And so this is not a matter of you not recalling whether that occurred or not—

A. I am telling you—

Q. Well, let me—

A. —emphatically—

Q. Mr. Jordan, let me finish the question.

A. Okay, all right.

Q. Please, sir.

A. Okay.

Q. It's sort of important for the record.

This is a statement by Ms. Lewinsky that you flatly and categorically deny?

A. Absolutely.

Q. Now, you talked about "mother wit," I think it was; that you knew at the time that you had this discussion with Ms. Lewinsky that these notes would have been covered by the subpoena based upon your discussion of that on December 19th?

A. Ask that question again.

Q. All right. This is a meeting on December 31st at the Park Hyatt.

A. Right.

Q. A discussion about the notes, correspondence between Ms. Lewinsky and the President.

A. Right.

Q. You are aware, based upon your discussion of the subpoena on December 19th, that these were covered under the subpoena?

A. Yes.

Q. And did you tell Ms. Lewinsky that you need to make sure you tell your attorney, Mr. Carter, and that these are turned over under the subpoena?

A. What I did not tell her was to destroy the notes. Whether I told her to give them to Mr. Carter or not, I have no recollection of that.

Q. But you knew at the time that these notes were a matter of evidence?

A. I think that's a valid assumption.

Q. But you knew that?

A. It's a valid assumption.

Q. Now, during this meeting at the Park Hyatt, did Ms. Lewinsky also make it clear to you that she was in love with the President?

A. That, I had already concluded.

Q. And if Ms.—now, was there anything else at the Park Hyatt at this meeting on December 31st that you recall discussing with Ms. Lewinsky?

A. Job, work, in New York, in the private sector.

Q. And that was the—was this a meeting that was set up at her request or your request?

A. I'm certain it was at her request. I am fairly certain that I did not call Ms. Lewinsky and say will you join me at the Park Hyatt for breakfast on December 31st, on New Year's Eve.

Q. All right. And did you also talk about her situation under the subpoena and the fact that she was going to have to give testimony, it looked like?

A. I am not Ms. Lewinsky's lawyer, and I did not view it as my responsibility to give Ms. Lewinsky advice and counsel.

I had found her very able, competent counsel.

Q. Respectfully, I am simply asking whether that was discussed.

A. And I am simply saying to you, I did not provide her legal counsel.

Q. Okay. Was it discussed in—not in terms of legal representation, but in terms of Mr. Jordan to Monica Lewinsky about any emotional concerns she might have about pending testimony?

A. I have no recollection of talking to her about pending testimony.

Q. Fair enough. Now, let's go back to Mr. Carter's representation of Ms. Lewinsky that you referred to. Were you aware that Mr. Carter was preparing an affidavit for Ms. Lewinsky to sign in the Jones case?

A. Yes.

Q. And on or about the 6th or 7th of January, did you become aware that she in fact had signed the affidavit and that Mr. Carter had filed a motion to quash her subpoena in the case?

A. She told me that she had signed the affidavit.

Q. And did in fact Mr. Carter also relate to you that that had occurred?

A. Yes.

Q. And I think you made a statement in your March grand jury testimony that there was no reason for accountability, that he reassured me that he had things under control?

A. That is correct. I stand by that testimony.

Q. And now, if you would, look at the next exhibit, which is in that stapled bunch of exhibits that have been provided to you.

MR. HUTCHINSON: This will be Exhibit No. 7, we'll mark for your deposition. And, Senator, did we put Exhibit No. 6 in?

SENATOR THOMPSON: No, we didn't.

MR. HUTCHINSON: I would like to offer that as an exhibit to this deposition.

SENATOR THOMPSON: It will be made a part of the record.

[Jordan Deposition Exhibit Nos. 6 and 7 marked for identification.]

[Witness perusing document.]

SENATOR DODD: That is Number 6?

MR. HUTCHINSON: Six. That's the Park Hyatt.

SENATOR DODD: Oh, that is going to be Number 6, the Park Hyatt, not the—

MR. HUTCHINSON: Yes.

SENATOR THOMPSON: Now, what is 7?

MR. HUTCHINSON: Now, 7 is the affidavit of Jane Doe Number 6, which in the—I think everybody has found that in the book.

SENATOR THOMPSON: What is the grand jury number?

MR. HUTCHINSON: It's 85, the grand jury number.

This will be Deposition Exhibit Number 7.

BY MR. HUTCHINSON:

Q. Now, Mr. Jordan, I think you're reviewing that.

This affidavit bears the signature on the last page of Monica S. Lewinsky, is that correct?

A. Yes.

Q. And have you ever seen this signed affidavit before?

A. I don't think so.

Q. Do you not recall that Ms. Lewinsky brought this in and showed it to you?

A. She may have.

Q. And I'd be glad to refresh you. I know that some of this—

A. Yeah, if it's in the testimony, Congressman.

Q. Page 192 of your previous grand jury testimony. Is it your recollection that she showed this to you in a meeting in your office after she had signed it?

A. I stand by that testimony.

Q. And so the date of that signature of Ms. Lewinsky, is that January 7?

A. January 7th, 1998.

Q. All right. Now, whenever she presented this signed affidavit to you, did you read it sufficiently to know that it stated that Ms. Lewinsky did not have a sexual relationship with the President?

A. I was aware that that was in the affidavit.

Q. And I believe you previously testified that you're a quick reader and you skimmed it and familiarized yourself with it?

A. Skimmed it.

Q. And prior to seeing the signed affidavit that she brought to you, the day after it was signed, was there a time that Ms. Lewinsky called you concerning the affidavit and said that she had some questions about the draft of the affidavit?

A. Yes. I do recollect her calling me and asking me about the affidavit, and I said to her that she should talk to the—talk to Frank Carter, her counsel, about the affidavit and not to me.

Q. And if I could go into, again, some areas that had not been previously asked to you, and since Ms. Lewinsky testified to the grand jury on August 6th.

Ms. Lewinsky has testified that she dropped a copy of the affidavit to you, and that you—and that you and she had a telephone conversation in which you discussed changes to the affidavit. Does this refresh your recollection, and do you agree with Ms. Lewinsky's recollection of a discussion on changes in the affidavit?

A. I do agree with the assumption—I mean, I do agree with the statement that Ms. Lewinsky dropped the affidavit off and called me up about the affidavit and was quite verbose about it, and I sort of listened and said to her, "You need to talk to Frank Carter."

She was not satisfied with that, and so she kept talking and I kept doodling and listening as she went on in sort of a, for lack of a better word, babble about this—about this thing, but it was not my job to advise her about an affidavit. I don't do affidavits.

Q. Now, if I may show you, which would be Exhibit—

MR. HUTCHINSON: First, let me go ahead and offer 7.

SENATOR THOMPSON: It's made a part of the record.

[Jordan Deposition Exhibit No. 7 received in evidence.]

MR. HUTCHINSON: It's part of the record.

And then go to Exhibit 8, which was marked as Exhibit 39 as your previous grand jury testimony.

[Jordan Deposition Exhibit No. 8 marked for identification.]

[Witness perusing document.]

BY MR. HUTCHINSON:

Q. Now, Exhibit 8 is a summary of telephone calls on January 6th, which would be the day before the affidavit was signed by Ms. Lewinsky on the 7th.

Now, you can reflect on that for a moment, but in reviewing these calls, it appears that Mr. Carter was paging Ms. Lewinsky early on in the day, 11:32 a.m., and then at 3:26, you had a telephone call with Mr. Carter for 6 minutes and 42 seconds.

And then there was—call number 6 was to Ms. Lewinsky, which was obviously a 24-second short call, and then a subsequent call for almost 6 minutes at 3:49 p.m. to Ms. Lewinsky.

Was this last call for 5 minutes to Ms. Lewinsky the call that you just referenced in which the draft affidavit was discussed?

A. I think that is correct. The 24-second call, I think, was voice mail.

Q. Was—was—pardon?

A. Voice mail.

Q. Certainly.

And subsequent to your conversation with Ms. Lewinsky for 5 minutes and 54 seconds, did you have two calls to Mr. Carter, which would be No. 9 and 10?

[Witness perusing document.]

THE WITNESS: Yes.

BY MR. HUTCHINSON:

Q. Do you know why you would have been calling Mr. Carter on three occasions, the day before the affidavit was signed?

A. Yeah. I—my recollection is—is that I was exchanging or sharing with Mr. Carter what had gone on, what she had asked me to do, what I refused to do, reaffirming to him that he was the lawyer and I was not the lawyer. I mean, it would be so presumptuous of me to try to advise Frank Carter as to how to practice law.

Q. Would you have been relating to Mr. Carter your conversations with Ms. Lewinsky?

A. I may have.

Q. And if Ms. Lewinsky expressed to you any concerns about the affidavit, would you have relayed those to Mr. Carter?

A. Yes.

Q. And if Mr. Carter was a good attorney that was concerned about the economics of law practice, he would have likely billed Ms. Lewinsky for some of those telephone calls?

A. You have to talk to Mr. Carter about his billing.

Q. It wouldn't surprise you if his billing did reflect a—a charge for a telephone conversation with Mr. Jordan?

A. Keep in mind that Mr. Carter spent most of his time in being a legal services lawyer. I think his concentration is primarily on service, rather than billing.

Q. But, again, based upon the conversations you had with him, which sounds like conversations of substance in reference to the affidavit, that it would be consistent with the practice of law if he charged for those conversations?

A. That's a question you'd have to ask Mr. Carter.

Q. They were conversations of substance with Mr. Carter concerning the affidavit?

A. And they were likely conversations about more than Ms. Lewinsky.

Q. But the answer was yes, that they were conversations of substance in reference to the affidavit?

A. Or at least a portion of them.

Q. In other words, other things might have been discussed?

A. Yes.

Q. In your conversation with Ms. Lewinsky prior to the affidavit being signed, did you in fact talk to her about both the job and her concerns about parts of the affidavit?

A. I have never in any conversation with Ms. Lewinsky talked to her about the job, on one hand, or job being interrelated with the conversation about the affidavit. The affidavit was over here. The job was over here.

Q. But the—in the same conversations, both her interest in a job and her discussions about the affidavit were contained in the same conversation?

A. As I said to you before, Counselor, she was always interested in the job.

Q. Okay. And she was always interested in the job, and so, if she brought up the affidavit, very likely it was in the same conversation?

A. No doubt.

Q. And that would be consistent with your previous grand jury testimony when you expressed that you talked to her both about the job and her concerns about parts of the affidavit?

A. That is correct.

Q. Now, on January 7th, the affidavit was signed. Subsequent to this, did you notify anyone in the White House that the affidavit in the Jones case had been signed by Ms. Lewinsky?

A. Yeah. I'm certain I told Betty Currie, and I'm fairly certain that I told the President.

Q. And why did you tell Betty Currie?

A. I'm—I kept them informed about everybody else that was—everything else. There was no reason not to tell them about that she had signed the affidavit.

Q. And why did you tell the President?

A. The President was obviously interested in her job search. We had talked about the affidavit. He knew that she had a lawyer. It was in the due course of a conversation. I would say, "Mr. President, she signed the affidavit. She signed the affidavit."

Q. And what was his response when you informed him that she had signed the affidavit?

A. "Thank you very much."

Q. All right. And would you also have been giving him a report on the status of the job search at the same time?

A. He may have asked about that, and—and part of her problem was that, you know, she was—there was a great deal of anxiety about the job. She wanted the job. She was unemployed, and she wanted to work.

Q. Now, I think you indicated that he was obviously concerned about—was it her representation and the affidavit?

A. I told him that I had found counsel for her, and I told him that she had signed the affidavit.

Q. Okay. You indicated that he was concerned, obviously, about something. What was he obviously concerned about in your conversations with him?

A. Throughout, he had been concerned about her getting employment in New York, period.

Q. And he was also concerned about the affidavit?

A. I don't know that that was concern. I did tell him that the affidavit was signed. He knew that she had counsel, and he knew that I had arranged the counsel.

Q. Do you know whether or not the President of the United States ever talked to her counsel, Mr. Carter?

A. I have—I have no knowledge of that.

Q. Did you ever relate to Mr. Carter that you were having discussions with the President concerning his representation of Ms. Lewinsky and whether she had signed the affidavit?

A. I don't know whether I told him that she had—he had—I don't know whether I told Mr. Carter that I told the President he had signed the affidavit. It is—it is not beyond reasonableness.

Q. Now let's go on. After the affidavit was signed, were you ultimately successful in obtaining Ms. Lewinsky a job?

A. Yes.

Q. And in fact, the day after Ms. Lewinsky signed the affidavit, you placed a personal call to Mr. Ron Perelman of Revlon, encouraging him to take a second look at Ms. Lewinsky?

A. That is correct, based on the fact that Ms. Lewinsky thought that her interview had not gone well, when in fact it had gone well.

Q. Okay. And in fact, Ms. Lewinsky had called you on a couple of occasions after the interview and finally got a hold of you and told you she thought the interview went poorly?

A. That's correct.

Q. And as a response to that information, you did not call Mr. Halperin back, who you had previously talked to about the issue, but you called Mr. Perelman?

A. That's right.

Q. Was there a reason that you called Mr. Perelman in contrast to Mr. Halperin?

A. Well, the same reason I would have called you about a committee if you were chairman of it, as opposed to calling to a member of the committee.

Q. All right. You wanted to go to the top?

A. When it's necessary.

Q. And I remember a phrase you used. I might not have it exactly right, but you don't get any richer or more powerful than Mr. Perelman?

A. Certainly not much richer.

Q. Okay. And—and so you had a conversation with Mr. Perelman, and did you tell him something like, make it happen if it can happen?

A. I said, "This young lady"—I mean, I think I said, "This young lady has been interviewed. She thinks it did not go well. Would you look into it?"

Q. And what was his response?

A. That he would look into it.

Q. Now I'd like to show you the next exhibit, and before I do that, I would go back and offer Number 7.

SENATOR THOMPSON: Seven is the last.

This would be Number 8 that you—that you have been discussing. The compilation of the telephone call record?

MR. HUTCHINSON: Yes.

MR. KENDALL: I object. Same ground as before. It's not best evidence. We don't know who compiled these. These are not primary records.

SENATOR THOMPSON: Mr. Jordan has verified several of these items, but I do notice there are some items here that do not have to do with Mr. Jordan, that we could not expect him to be able to verify.

So I would ask counsel, if he needs to identify any more of these conversations and use this to reflect Mr. Jordan's memory, he's free to do so, but as an exhibit, I think the objection is probably well taken.

MR. HUTCHINSON: Let me just state, Senator, that this is a compilation of calls based upon the records that have been in the Senate record, and this has been—this compilation has been in there some time.

Now, I, quite frankly, understand the objection, and it might have meritorious if this was being introduced into evidence in the actual trial, and so I would suggest perhaps, since he's identified most of the calls already, that this could be referenced as a deposition exhibit because he's referred to it and that's helpful, without—obviously, there might in a more—it might not be entered into evidence as such.

SENATOR THOMPSON: Could I ask you if it's been in the record as a compilation?

MR. HUTCHINSON: Yes, it has.

SENATOR THOMPSON: In this form? I notice that it has a grand jury—

MR. HUTCHINSON: It's—Senator, it's Volume III of the Senate record, page 161, and so it's all in there, anyway.

SENATOR THOMPSON: I notice in the record here, counsel is informing me that it is in the record, but there are several redactions. Is that correct?

MR. HUTCHINSON: That is correct, and for that reason—in fact, a number of these summaries are not redacted in our form and they're redacted in the record, and we'd like to have the opportunity to redact it in the form of taking out the personal telephone numbers.

MR. KENDALL: Senator Thompson, if I may be heard, my objection is—to this is a summary. We don't know who did it. We don't know what it's based on.

The witness has testified, and his testimony is in the record, so far as his recollection is refreshed.

I have no objection to original phone records, but I do object to the summary.

SENATOR THOMPSON: Counsel, could I suggest that maybe you just make a reference specifically to where it is in the existing record? I think it would serve your same purpose and to keep you from having—

MR. HUTCHINSON: Sure.

SENATOR THOMPSON: —to go through and redact everything. Would that be satisfactory?

MR. HUTCHINSON: I think that would be satisfactory, and what I can do is that I can withdraw this exhibit and reference in the transcript of this deposition that the exhibit is found in Table 35 of Senate record, Volume III, at page 161.

SENATOR DODD: Let me just ask the House Manager, if I can as well. Are these from the Senate record? I'm told that some of these are not from the Senate record, and we're kind of confined to the Senate record, as I understand it.

MR. HUTCHINSON: Well, other than the redactions, this summary itself is in the Senate record.

SENATOR THOMPSON: Yes.

Counsel informs me, it's already in. It refers to evidentiary record Volume IV.

MS. BOGART: Is it IV or III?

SENATOR THOMPSON: It says IV here, Part 2 of—Part 2 of 3.

So, for the record, this would be pages 1884 and 1885 of the evidentiary record, Volume IV, Part 2 of 3, all right?

MR. HUTCHINSON: Thank you.

SENATOR THOMPSON: All right. So the record will be—the objection will be sustained, and reference has been made.

SENATOR DODD: And can we just—because I presume you may have more of these coming along, and it seems to me you might want to have staff or others begin to work so we don't go through this every time, particularly with the unredacted material that may be included in here, which is not part of the Senate record.

The unredacted information comes out of the House record, as I understand, and that is a distinction.

MR. HUNDLEY: I would just add that Mr. Jordan—the last 3 days of his grand jury testimony, they asked him about every phone call, and if you want to use those, you know, go to his grand jury testimony, you know, I think it would move things along.

There isn't a phone call. We produced like a telephone book of phone calls that Mr. Jordan made, and they called them all out, after they got through asking about who's that, who's that and who's the—you've got a pretty good record of calls that might have some relevance in this.

SENATOR THOMPSON: All right, sir. All right.

SENATOR DODD: Let me also just suggest on the earlier—Senator Thompson, in the earlier objection raised by Counsel Kendall, sustained the objection, but had made reference to the fact that since this material had been brought into the record that those—if any documentation is included there, that we—we do use the Senate documents with the redacted information, rather than the House records for the purposes of this deposition.

SENATOR THOMPSON: All right, sir.

MR. HUTCHINSON: Thank you.

SENATOR THOMPSON: Proceed.

BY MR. HUTCHINSON:

Q. And I will handle it this way, Mr. Jordan, and let me say that I was sort of constructing my questioning, so as not to get bogged down in an extraordinary number of telephone calls, but let me go to the chart in front of you which is Grand Jury Exhibit 44, which is marked for our purposes as Exhibit 9 for identification purposes.

[Jordan Deposition Exhibit No. 9 marked for identification.]

[Witness perusing document.]

BY MR. HUTCHINSON:

Q. And I'm going to—I'd like for you to refer that—refer you to that for purposes of putting this particular day, January 8th, in context and asking you some questions about some of those telephone calls.

SENATOR THOMPSON: I'm sorry. What was the question? Are you making reference for identification purposes?

MR. HUTCHINSON: Yes. This is Exhibit 9, which is Grand Jury Exhibit 44.

SENATOR THOMPSON: All right, for identification purposes.

MR. HUTCHINSON: Yes.

SENATOR THOMPSON: All right.

BY MR. HUTCHINSON:

Q. Now, this is the day, January 8th, which is the day that Ms. Lewinsky felt like she had a poor job interview. Does this reflect calls from the Peter Strauss residence to your office?

A. I see a call number 3, 11:50 a.m., Peter Strauss residence. The number is here to my office.

Q. All right.

A. And it says length of call, one minute.

Q. All right. And, in fact, calls 3, 4 and 5 and 9 are calls from the Peter Strauss residence to your office?

A. That is correct.

Q. And Peter Strauss is the residence in which Ms. Lewinsky was staying while in New York?

A. I just know that Peter Strauss, my old friend, is Monica Lewinsky's stepfather.

MR. HUNDLEY: But he wasn't there.

THE WITNESS: You know, where she was and all of that, I don't know. I'm just—

BY MR. HUTCHINSON:

Q. You received calls from Ms. Lewinsky on this particular day?

A. From this number, according to this piece of paper.

Q. And does this time reference coincide with your recollection as to when you received calls from Ms. Lewinsky on this particular day?

A. Yes.

Q. And during these calls is when she related the difficulty of the job interview; is that correct?

A. I believe so—that it had not gone well.

Q. All right. And then, subsequently, you put in a call to Mr. Perelman at Revlon?

A. Yes.

Q. And that was to encourage him to take a second look. Is that call number 6 on this summary?

A. Call number 6; it lasted one minute and 42 seconds.

Q. And is that the call that you placed to Mr. Perelman?

A. I believe that is correct.

Q. And this was subsequent to the calls that you received from Ms. Lewinsky?

A. That is correct.

Q. And then you let Ms. Lewinsky know that you had called Mr. Perelman; and do you recall what you would have told her at that time?

A. I think I told her that I had spoken with, uh—with, uh, Mr. Perelman, the chairman, and that I was hopeful that things would work out.

Q. All right. And, in fact, they did work out because the next day you were informed that a temporary job—or a preliminary job offer had been made to Ms. Lewinsky?

A. That's right.

Q. So she was able to secure the job based upon your call to Mr. Perelman?

A. Based upon my call, from the time that I called Halperin through to Mr. Perelman.

Q. All right.

A. I take credit for that.

Q. All right. Now, in fact, you've used terms like "the Jordan magic worked"?

A. It—it has from time to time.

Q. And it did on this occasion?

A. I believe so.

Q. And then, you also informed Ms. Betty Currie that the mission was accomplished?

A. Yes.

Q. And after securing the job for Ms. Lewinsky, you did inform Betty Currie of that fact?

A. And the President.

Q. All right. And was the purpose of letting Betty Currie know so that she could tell the President?

A. She saw the President much more often that I did.

Q. And—but you wanted to inform the President personally that you were successful in getting Ms. Lewinsky a job?

A. Yes.

Q. And you did that, uh—was it on the—what, the day after she secured the job or the day—the day that she secured the job?

A. I don't know the answer to that.

Q. Well, shortly thereafter is it fair to say that you informed the President personally?

A. I certainly told him.

Q. All right. Now, at this point, you had successfully obtained a job for Ms. Lewinsky at the request of the President, and you had been successful in obtaining an attorney for Ms. Lewinsky. Did you see your responsibilities in regard to Ms. Lewinsky as continuing or completed?

A. I don't know, uh, that I saw them as, uh, necessary completed. There is—as you know from your own experience in helping young people with work, there tends to be some sense of responsibility to follow through, that they get to work on time, that they work hard, and that they succeed. So I don't think that I felt that my responsibility had terminated. I felt like I had a continuing responsibility to just make sure that it happened and that she—that it worked out all right. But I don't think I acted on that responsibility.

Q. Well, this is—the job was completed—I believe it was January 8th when she secured the job?

A. That was the day that I called Ronald Perelman.

Q. Okay, so it would have been the 9th that she would have been informed that she had the job.

A. That's right.

Q. So this is the 9th of January, and that mission had been accomplished. Now, I want you to recall your testimony of May 28th before the grand jury in which the question was asked to you—and this is at page 81; the question begins at the bottom of page 80.

Question: "When you introduced Monica Lewinsky to Frank Carter on December 22, 1997, what further involvement did you expect to have with Monica Lewinsky and Frank Carter?"

Answer: "Beyond getting her the job, I thought it was finished, done"—and what's that last word you used?

A. "Fini."

Q. "Fini." And so that was the basis on the question, was your previous testimony that after you got Ms. Lewinsky a job and after you secured her attorney, there was really no other need for involvement or continued meetings with her?

A. That is correct. That does not mean, on the other hand, that, uh, if you go to a meeting at the board, that you don't stop in and see how—how people are doing. In this circumstance, that process was short-circuited very quickly.

Q. I'm sorry?

A. She never ended up working there. You—you—you do remember that.

Q. Now, but you had described your frequent telephone calls from Ms. Lewinsky as being bordering on annoyance, I think. Is that a fair characterization?

A. That's a fair characterization.

Q. And you're a busy man. You stopped billing at $450 an hour. You're having calls from Ms. Lewinsky. Were you glad at this point to have this "bordering on annoyance" situation completed?

A. "Glad" is probably the wrong word. "Relieved" is maybe a better word.

Q. All right. Now, during the time that you were helping Ms. Lewinsky secure a job, this was widely known at the White House, is that correct?

A. I—I don't know the extent to which it was widely known. I dealt with Ms. Currie and with the President.

Q. In fact, Ms. Cheryl Mills, sitting here at counsel table, knew that you were helping Ms. Lewinsky?

A. I believe that's true.

Q. And Betty Currie knew that you were helping Ms. Lewinsky?

A. Yes.

Q. The President knew it?

A. Yes.

Q. And you presumed that Bruce Lindsey knew it?

A. I presumed that. That's a very small number, given the number of people who work at the White House.

Q. Now, after that December 19 meeting—and I'm backtracking a little bit—the meeting that you had with Ms. Lewinsky in which she covered with you the fact that she had been subpoenaed, after that, you had numerous conversations with Ms. Betty Currie; is that correct?

A. I'm not sure I had numerous conversations with Ms. Betty Currie, but I have always during this administration been in touch with Ms. Currie.

Q. And during those conversations with Ms. Betty Currie, did you let her know that Ms. Lewinsky had been subpoenaed?

A. I think I've testified to that.

Q. All right, and so would that have been fairly shortly after the meeting on December 19th with Ms. Lewinsky that you notified Betty Currie that Ms. Lewinsky had in fact been subpoenaed?

A. I—I think that's safe to say, Counselor.

MR. HUTCHINSON: Senator, I—this would be a good time for a break, if that would meet with your approval, for lunch.

SENATOR THOMPSON: All right, sir.

MR. HUTCHINSON: And I'm—it's hard to estimate, and you probably don't trust lawyers when they tell you how long it's going to take after lunch, but—

SENATOR THOMPSON: Try your best. Do you want to make an estimate, or you'd rather not?

MR. HUTCHINSON: Oh, I think it would be less than an hour that I would have remaining, and most likely much shorter than that.

SENATOR THOMPSON: All right, sir.

THE WITNESS: May I make a suggestion? It's 25 minutes to 1. Do you want to go to 1 o'clock?

MR. HUTCHINSON: I think a break would be helpful.

THE WITNESS: To you or to me?

[Laughter.]

SENATOR THOMPSON: I think some of us have some scheduling issues, and I do understand that, so I'm open to any suggestions, Senator Dodd or anyone else, as to how long we want to take. Yesterday, they took an hour. I'm not—we have a conference and I could use a little extra time, I suppose, in addition to the hour, but it's not of major concern to me.

I assume you want to get back as soon as possible.

THE WITNESS: I'm prepared to forgo lunch and stay here as long as need be so we can finish. And we don't have to have lunch; we can just keep going, if it's all right with counsel.

SENATOR THOMPSON: Well, we've got some scheduling issues that we are going to have to take care of. So let's just make it—let's just make it—

SENATOR DODD: That clock is a little fast, I think.

SENATOR THOMPSON: Is it?

SENATOR DODD: Is that right? It's about 12:30?

THE VIDEOGRAPHER: It's 12:35.

SENATOR DODD: So an hour and 15 minutes. Is that—

SENATOR THOMPSON: What about—what about—let's come back at 1:45. That will be about, what—that's an hour and 10 minutes, isn't it, or 8 minutes, something like that?

All right. Without objection, then—

SERGEANT-AT-ARMS: Senator, we have lunch outside here. It's sandwiches—

SENATOR DODD: Can we go off the record?

SENATOR THOMPSON: Are we off the record? Let's go off the record.

THE VIDEOGRAPHER: We're going off the record now at 12:33 p.m.

[Whereupon, at 12:33 p.m., a luncheon recess was taken.]

AFTERNOON SESSION

THE VIDEOGRAPHER: We are going back on the record at 1349 hours.

SENATOR THOMPSON: All right. Mr. Hutchinson?

MR. HUTCHINSON: Thank you, Senators.

DIRECT EXAMINATION BY HOUSE MANAGERS—RESUMED

BY MR. HUTCHINSON:

Q. Mr. Jordan, good afternoon.

A. Good afternoon.

Q. You testified very clearly earlier today that you were a close friend of the President. Would you also describe yourself as a friend of Mr. Kendall, sitting to my left, one of the attorneys for the President?

A. Not only is Mr. Kendall my friend, Mr. Kendall has, unfortunately, the distinction of graduating from Wabash College, a little, small town in Indiana, and I'm a graduate of DePauw University, and we have a 100-year rivalry. And Mr. Kendall and I bet.

Mr. Hutchinson, I am pleased to tell you that Mr. Kendall is in debt to me for 2 years because DePauw—

MR. KENDALL: May I object?

[Laughter.]

THE WITNESS: —because DePauw University has defeated Wabash College two times in succession. And so, yes, we are very good friends. I have great respect for

him as a person, as a lawyer, and despite his undergraduate degree from Wabash, I respect his intellect.

BY MR. HUTCHINSON:

Q. May I assume from that answer that the answer to my question is yes?

A. The answer—the answer to your question is, indubitably, yes.

Q. Now I am going to ask another question in similar vein. You can answer yes or no. Do you consider yourself a friend of Cheryl Mills?

A. That requires more than just a "yes" answer.

Q. I do not want to shortchange her, but I know that—in fact, I think you might have, to a certain extent, mentored her. Is that a fair description?

A. And vice versa.

Q. All right. And Bruce Lindsey, is he also a friend of yours?

A. Yes.

Q. Now—so when was the last time that you met with any member of the President's defense team?

A. I have not had a meeting with a member of the President's defense team. They were right nextdoor to me just a few minutes ago, and we said hello, but we have not had a meeting. And maybe if you'd tell me about what, I can be more specific.

Q. Well—and that's a good point. Certainly, we're lawyers, and we have casual conversations, and we visit and we exchange pleasantries, and that's the way life should be.

I guess I was more specifically going to the question as to whether you have discussed with the President's defense team any matter of substance relating to the present proceedings in the United States Senate.

A. Any matter of substance relating to these proceedings here in the United States Senate have been handled very ably by my lawyer, Mr. William Hundley.

Q. And I understand that, but my question is—despite your able representation by Mr. Hundley—my question is—is whether you had any meetings or discussions with the President's defense team in regard to these proceedings.

A. The answer is no.

Q. Thank you.

And has anyone briefed you other than your attorney, Mr. Hundley, on yesterday's deposition of Ms. Lewinsky?

A. The answer is no.

Q. Now, you know Greg Craig?

A. I do know Greg Craig.

Q. And he's a member of the President's defense team as well?

A. Yes.

Q. And you have not had any meetings of substance with him in regard to the present proceedings?

A. I have not.

Q. And have you had any meetings with any of the President's defense team in regard to not just the present proceedings, but prior proceedings related to your testimony before the grand jury or the investigation by the OIC?

A. I have had conversations with the President's lawyer, Mr. Bennett, and a conversation or two with Mr. Kendall on the issue of settlement of the Paula Jones case, and I believe I testified to that before the grand jury.

Q. All right. Thank you, Mr. Jordan, and now let me move to another area.

Do you recall an occasion in which Ms. Betty Currie came to see you in your office a few days before the President's deposition in the Jones case on January 17th?

A. Yes, I do.

Q. And I believe you have previously indicated that it was on a Thursday or Friday, which would have been around the 15th or 16th?

A. Yeah. I've testified to that specifically as to the date in my grand jury testimony, and I stand on that testimony.

Q. Certainly. But in general fashion, it would have been a couple of days before the President's testimony on January 17th?

A. I believe that is correct, sir.

Q. And did—was this meeting with Betty Currie originated by a telephone call with Ms. Betty Currie?

A. Ms. Currie called me.

Q. And did she explain to you why she needed to see you?

A. Yes, she did.

Q. And was that that she had a call from Michael Isikoff of Newsweek magazine?

A. That is correct.

Q. And what did she say about that that caused her to call you?

A. She had said that Mr. Isikoff had called her and wanted to interview her, having something to do with Monica Lewinsky, and I said to her, why don't you come to see me.

Q. And why did you ask her to come see you, rather than just talking to her about it over the telephone?

A. I felt more comfortable doing that, and I think she felt comfortable or more comfortable doing that, rather than doing it on the telephone. And so I asked her to come to my office, and she did.

Q. Did you consider—or did she seem upset at the time that she called?

A. I think she was concerned.

Q. And as—you did in fact meet with her in your office?

A. I did.

Q. And what did she relate to you in your office?

A. That Michael Isikoff was a friend of hers, and that Michael Isikoff had called to—pursuant to a story that he was about to write having to do with Ms. Lewinsky, and she—she was concerned about what to do. And I suggested to her that she talk to Bruce Lindsey and to Mike McCurry as to what she should do, Bruce Lindsey on the legal side and Mike McCurry on the communications side.

Q. Did she explain to you what it was specifically that Mr. Isikoff was inquiring about in reference to Ms. Lewinsky?

A. No. I don't remember the exact nature of Isikoff's inquiry. What I do remember is that Isikoff, a Newsweek magazine reporter, had called and was making these inquiries, and she was at a loss as to where to turn or to what to do, and I think that stemmed from the fact of some White House policy saying that before you talk to anybody in the media, you check it out.

Q. And did she explain to you that she had already seen Bruce Lindsey about it before she came to see you?

A. She did not.

Q. And so you were basically telling her to see Bruce Lindsey, and if she had already seen that, then that might have not been that helpful?

A. I don't know whether I was being helpful or not. I responded to her, and I gave her the advice to call Bruce Lindsey and to call Mike McCurry.

Q. Let me refer you to the testimony of Ms. Betty Currie, and perhaps that will help refresh you, and if not, perhaps you can respond to it.

A. Sure.

Q. And for reference purposes, I'm referring to the grand jury testimony of Ms. Betty Currie on May 6th, 1998, at page 122.

MR. HUTCHINSON: Is there a way I—

MR. HUNDLEY: We don't have that. If you want to—if you want us to read along or just—

THE WITNESS: Wait a minute. I might have it right here. What page?

MR. HUTCHINSON: What's the exhibit number?

MR. HUNDLEY: How long is it, Mr. Hutchinson?

MR. HUTCHINSON: This would just be some short question-and-answers.

MR. HUNDLEY: Why don't you just read it? We don't—go ahead.

THE WITNESS: Oh, fine.

BY MR. HUTCHINSON:

Q. I'm going to read it, and if there's—it's at page 122, but this just puts it in context.

The question: "Ms. Currie, if I'm not mistaken, if I could ask you a couple of questions. When you found out Mr. Isikoff was curious about the courier receipts, you were concerned enough to go visit Vernon Jordan?"

The answer is: "Correct."

And I'm skipping on down. I'm trying to point to a couple of things that are of interest.

And question: "And you went to Bruce Lindsey because you said you knew that he was working on the matter?"

And question: "What did Bruce tell you after you told him this?"

And answer: "He told me not to call him back, referring to Mr. Isikoff, make him work for the story. I remember that."

And then she refers to going to see Mr. Jordan.

Why did you tell him, or, "Why did you call Mr. Jordan?"

Answer: "Because I had a comfort level with Vernon, and I wanted to see what he had to say about it."

MR. KENDALL: Counsel, excuse me. I object to your reading of that, but my understanding that the conversation with Bruce Lindsey occurred later. Are you representing that it occurred before the visit to Mr. Jordan? I don't have the transcript in front of me.

MR. HUTCHINSON: Well, I'm—I'm not making a representation one way or the other. I'm just representing what Ms. Currie testified to, and that is the context of it, that the visit to Mr. Lindsey was prior to going to see Mr. Jordan. And that is at page 122 through 130 of Betty Currie's transcript of May 6th, 1998.

BY MR. HUTCHINSON:

Q. But the first question, Mr. Jordan, is that she refers to courier receipts. I believe that was referring to courier records of gifts from Ms. Lewinsky to the President.

Did Ms. Currie come to you and say specifically that Mr. Isikoff was inquiring about courier records on gifts from Ms. Lewinsky to the President?

A. I have no recollection of her telling me about the specific inquiry that Isikoff was making. The issue for her was whether or not she should see him, and I said to her, before she made any decision about that, that she should talk to these two particular people on the White House staff.

Q. Well, again, if Ms. Currie refers to the courier receipts on gifts, would that be in conflict in any way with your recollection as to what Mr. Isikoff was inquiring about, what Ms. Currie told you?

A. I stand on what I've just said to you.

Q. Now, you followed this case, and, of course—

SENATOR THOMPSON: While we're on that subject, does counsel need any additional time to look over that? I don't want to leave an objection on the record. If you feel like you need to press it—

SENATOR DODD: Do you have a copy of the document?

MR. KENDALL: Senator Thompson, we don't have the full copy of the Currie transcript. This was not—

SENATOR THOMPSON: Why don't we reserve this, then, and you can be looking at it, and then we'll—we'll take it up a little later.

MR. KENDALL: We're still actually missing some pages of the transcript. I don't know if somebody has that.

SENATOR DODD: Why don't you see if you can't get them for them?

SENATOR THOMPSON: Okay.

SENATOR DODD: All right?

SENATOR THOMPSON: We'll let them be doing that, if that's okay with everyone and—

SENATOR DODD: And you'll withdraw your objection as of right now, or—

MR. KENDALL: Yes. I'll withdraw it until I can scrutinize the pages, but I may then renew it.

SENATOR THOMPSON: All right, sir.

BY MR. HUTCHINSON:

Q. On—there's been some testimony in this case by Ms. Lewinsky that on December 28th, there was a gift exchange with the President; that subsequent to that, Ms. Currie went out and picked up gifts from Ms. Lewinsky, and she put those gifts under Ms. Currie's bed. Are you familiar with that basic scenario?

A. I read about it and heard about it. I do not know that because that was told to me by Ms. Lewinsky or by Ms. Currie.

Q. Certainly, and I'm just setting that forth as a backdrop for my questioning.

Now, you know, I guess it's—it might be difficult to understand a great deal of concern about a news media call, but if that news media call was about gifts or evidence that was in fact under Ms. Currie's bed or involved in that exchange, then that would be a little heightened concern.

A. Yes.

Q. Would that seem fair?

A. I do not, as I've said to you, know specifically the nature of Mr. Isikoff's inquiry to Ms. Currie, and I know nothing at that particular time about Mr. Isikoff making an inquiry about gifts under the bed.

Q. All right. I refer you to your grand jury testimony of March 5, 1998, at page 73, when the question was asked of you about Ms. Currie's visit to you, "What exactly did she tell you?" and your answer: "She told me that she had a call from Isikoff from Newsweek magazine, who was calling to make inquiries about Monica Lewinsky and some taped conversations, and I said you have to talk to Mike McCurry and you have to talk to Bruce Lindsey."

And so, despite your statement today that you have no recollection as to what she told you, going back to your March testimony, you referred to her relating Isikoff inquiring about taped conversations.

A. And that's what it says, "taped conversations," and I stand by that.

What was taped, I don't know.

Q. Well, I don't think you previously today mentioned taped conversations.

MR. HUNDLEY: Well, I don't really think your question would have called for that response, but I'm not going to object.

MR. HUTCHINSON: Thank you, Mr. Hundley.

BY MR. HUTCHINSON:

Q. I'm trying to get to the heart of the matter. Ms. Currie is concerned enough that she leaves the White House and goes to see Mr. Vernon Jordan, and she raises an issue with you and, according to your testimony, you told her simply, you need to go see Mike McCurry or Bruce Lindsey.

A. That is correct.

Q. And it's your testimony that she never raised with you any issue concerning the—Mr. Isikoff inquiring about gifts and records of gifts by Ms. Lewinsky?

A. I stand by what I—what you just read to me about—from my testimony about tapes conversations. I have no recollection about gifts or gifts under the bed.

Q. Okay. Are you saying it did not happen, or you have no recollection?

A. I certainly have no recollection of it.

Q. Well, do you have a specific recollection that it did not happen, that she never raised the issue of gifts with you?

A. It is my judgment that it did not happen.

Q. Did she seem satisfied with your advice to go see Mr. Bruce Lindsey, who she presumably had already seen?

A. I assumed that she took my advice.

Q. Did she discuss in any way with you the incident on December 28th when she retrieved the gifts—

A. She did not.

Q. —from Ms. Lewinsky?

A. She did not.

Q. Now, a few days later, the President of the United States testified before the grand jury in the—excuse me—testified in his deposition in the Jones case.

After the President's deposition, did he have a conversation with you on that day?

A. Yes. I'm sure we talked.

Q. And then, on the next day, and without getting into the entire record of telephone calls, there was, is it fair to say, a flurry of telephone calls in which everyone was trying to locate Ms. Monica Lewinsky?

A. The next day being which day?

Q. The next day would have been—well, January 18th.

A. That's Sunday.

Q. Correct.

MR. HUNDLEY: I think it's the 19th.

THE WITNESS: I think it's the 19th when there was a flurry of calls.

MR. HUTCHINSON: I think you're absolutely correct.

THE WITNESS: We'll be glad to be helpful to you in any way we can.

MR. HUNDLEY: We're even now. I was wrong on one. You were wrong.

MR. HUTCHINSON: That's fair enough, fair enough.

BY MR. HUTCHINSON:

Q. And on the 19th—of course, the 18th is in the record where the President visited with Ms. Betty Currie at the White House—on the 19th, which would have been Monday, was there on that day a flurry of activity in which there were numerous telephone calls, trying to locate Monica Lewinsky?

A. Yes. And you have a record of those telephone calls, and those telephone calls, Congressman, were driven by two events—first, the Drudge Report; and later in the afternoon, driven by the fact that, uh, I had been informed by Frank Carter, counsel to Ms. Lewinsky, that he had been relieved of his responsibilities as her counsel. And that is the basis for these numerous telephone calls.

Q. And you yourself were engaged in some of those telephone calls trying to locate Ms. Lewinsky?

A. Oh, yes, to ask her—I mean, I had just found out that she had been involved in these conversations with this person called Linda Tripp, and that was of some curiosity and concern to me.

Q. And you had heard Ms. Tripp's name previously on December 31st at the Park Hyatt?

A. I've testified already that I never heard the name "Linda Tripp" until I saw the Drudge Report. I did not testify that I heard the name "Linda Tripp" on December 31st.

Q. So the first time you heard Ms. Tripp's name was on January 19th when the Drudge Report came out?

A. That is correct.

Q. And you had already secured a—

A. The 18th, I believe it was.

MR. HUNDLEY: Eighteenth.
THE WITNESS: Not the 19th.
BY MR. HUTCHINSON:
Q. Thank you.
You had already secured a job for Ms. Lewinsky?
A. That is correct.
Q. And you—
A. Found a lawyer.
Q. And a lawyer. And, as you had said at one point, job finished—fini. Why is it that you felt like you needed to join in the search for Ms. Lewinsky?
A. If you had been sitting where I was, and all of a sudden you found out, after getting her a job and after getting her a lawyer, that there's a report that says that she's been—she's been taped by some person named Linda Tripp, I think just, mother wit, common sense, judgment, would have suggested that you would be interested in what that was about.
Q. And were you trying to provide assistance to the President of the United States in trying to locate Ms. Lewinsky?
A. I was not trying to help the President of the United States. At that point, I was trying to satisfy myself as to what had gone on with this person for whom I had gotten both a job and a lawyer.
Q. Now, subsequent to this, you felt it necessary to make a public statement on January 22 in front of the Park Hyatt Hotel?
A. I did make a public statement on January 22nd at the Park Hyatt Hotel.
Q. And what was the reason that you gave this public statement?
A. I gave the public statement because I was being rebuked and scorned and talked about, sure as you're born, and I felt some need to explain to the public what had happened.
MR. HUTCHINSON: All right. And I have a copy of that public statement that is marked as Grand Jury Exhibit 87, but we will mark it as Exhibit—
SENATOR THOMPSON: Seven, I believe.
SENATOR DODD: We've gone through 9, haven't we? You're marking it. If you're only marking it, I think we—
SENATOR THOMPSON: We have six exhibits, didn't we?
SENATOR DODD: We've done more than that, haven't we?
MR. HUTCHINSON: I have nine.
SENATOR DODD: Nine. Did you enter 9, or did you just note it?
SENATOR THOMPSON: Six were entered, two were sustained, I think.
MS. MILLS: I have seven.
SENATOR DODD: Nine, you have here, but we didn't—I don't know if you—you don't have 9 as an exhibit, or just noted?
MR. GRIFFITH: Nine was Grand Jury 44.
MR. HUTCHINSON: We just noted it, I believe.
SENATOR DODD: You didn't ask that it be entered in the record?
MR. HUTCHINSON: I believe that's correct.
SENATOR DODD: Yes.
SENATOR THOMPSON: How about those we sustained objections to? That doesn't count.
SENATOR DODD: Well, they're still marked.
SENATOR THOMPSON: They were marked?
SENATOR DODD: So which one should this be? Ten?
SENATOR THOMPSON: This will be 10?
SENATOR DODD: This is 10, then.
MR. HUTCHINSON: All right, Number 10.
[Jordan Deposition Exhibit No. 10 marked for identification.]
BY MR. HUTCHINSON:
Q. Do you have a copy of that, Mr. Jordan?
A. I have a copy of it. Thank you.
Q. Thank you. Now, prior to making this public statement, did you consult with the President's attorney, Mr. Bob Bennett?
A. I did not, not about this statement.
Q. Did you consult with the President's attorney, Mr. Bob Bennett?
A. I did not consult with him. Mr. Bennett came to my office and met with me and my attorney, Mr. Hundley, in my office.
Q. All right. And that was sometime prior to making this statement?
A. That is correct.
Q. And it would be—and it would have been between the 19th and the 22nd?
A. That is correct.
Q. It would have been after all of the public issues—

A. It was after—

Q. —came up?

A. —I returned from Washington, and it may have been—from New York—and it may have been, I think, Wednesday afternoon.

Q. Now, in this statement, you indicated that you referred Ms. Lewinsky for interviews at American Express and at Revlon.

A. That is correct, and Young & Rubicam.

Q. And in fact, as your testimony today indicates, you did more than refer her for interviews, did you not?

A. Explain what you mean, and I'll be happy to answer.

Q. Well, in fact, when the interview went poorly, according to Ms. Lewinsky, you made calls to get her a second interview and to make it happen.

A. That is safe to say.

Q. All right. And I think you've also described your involvement in the job search as running the job search?

A. Yes.

Q. And so it was a little bit more than simply referring her for interviews. Is that a fair statement?

That's a fair statement.

Q. And then, in this statement, you also indicate that "Ms. Lewinsky was referred to me by Ms. Betty Currie"——

A. Yes.

Q. —is that correct?

A. That is correct.

Q. And in fact, you were acting, as you stated, at the behest of the President?

A. Through Ms. Currie. I'm satisfied with this statement as correct.

Q. So—but you were acting in the job search at the behest of the President, as you have previously testified?

A. I've testified to that.

MR. HUTCHINSON: Now, we would offer this as Exhibit No. 10.

SENATOR THOMPSON: Without objection, it will be made a part of the record.

[Jordan Deposition Exhibit No. 10 received in evidence.]

MR. HUNDLEY: The only problem with this line of questioning is I think I wrote that thing.

[Laughter.]

BY MR. HUTCHINSON:

Q. After you—after you last testified before the grand jury in June of '98, since then, the President testified before the grand jury in August, and prior to his testimony before the grand jury in August, he made his statement to the Nation in which he—I believe the language was admitted to "an inappropriate relationship with Ms. Lewinsky."

Now, at the time that you testified in June of '98, you did not have this information, did you?

A. He had not made that statement on the 17th of August, that's for sure.

Q. And was he in fact, to your knowledge, still denying the existence of that relationship?

A. I think, as I remember the statement, he said he misled the American people.

Q. And subsequent to this admission, did you talk to your friend, the President of the United States, about his false statements to you?

A. I have not spoken to him about any false statements, one way or the other.

Q. Now, you have testified that you in the job search were acting at the behest of the President of the United States; is that correct?

A. I stand on that.

Q. And there is no question but that Ms. Monica Lewinsky understood that?

A. I have to assume that she understood that.

Q. Okay. And in the law, there is the rule of agency and apparent authority. Is it safe to assume that Ms. Lewinsky believed that you had apparent authority on behalf of the President of the United States?

A. I think I know enough about the law to say that the law of agency is not applicable in this situation where there was a potential romance and not a work situation. I think the law of agency has to do with a work situation and an employment situation and not having to do with some sort of romance. I think that's right.

Q. Well, let me take it out of the legal realm.

A. You raised it—I didn't.

Q. And let's put it in the realm of mother wit. Ms. Lewinsky is looking to you as a friend of the President of the United States, knowing that you're acting at the behest of the President of the United States. Is it not reasonable to assume that

when she communicates something to you or she hears something from you, that it's as if she is talking to someone who is acting for the President?

A. No. When she's talking to me, she's talking to me, and I can only speak for me and act for me.

MR. HUTCHINSON: Could I have just a moment?

SENATOR THOMPSON: Yes.

MR. HUTCHINSON: At this time, Your Honors, the House Managers would reserve the balance of its time.

SENATOR THOMPSON: Counsel?

MR. HUNDLEY: Fine.

SENATOR THOMPSON: All right.

MR. HUTCHINSON: Thank you, Mr. Jordan.

THE WITNESS: Thank you, Mr. Hutchinson.

SENATOR THOMPSON: Mr. Kendall?

EXAMINATION BY COUNSEL FOR THE PRESIDENT BY MR. KENDALL

Q. Mr. Jordan, is there anything you think it appropriate to add to the record?

A. Mr. Hutchinson, I'd just like to——

MR. HUTCHINSON: I'm going to object to the form of that question. I think that even though—and that's not even a leading question; that's an open-ended question that calls for a narrative response. And I think in fairness to the record that that is just simply too broad for this deposition purpose.

SENATOR THOMPSON: Mr. Kendall, is there any chance of perhaps your rephrasing the question somewhat?

MR. KENDALL: Certainly.

BY MR. KENDALL:

Q. Mr. Jordan, you were asked questions about job assistance. Would you describe the job assistance you have over your career given to people who have come to you requesting help finding a job or finding employment?

A. Well, I've known about job assistance and have for a very long time. I learned about it dramatically when I finished at Howard University Law School, 1960, to return home to Atlanta, Georgia to look for work. In the process of my—during my senior year, it was very clear to me that no law firm in Atlanta would hire me. It was very clear to me that, uh, I could not get a job as a black lawyer in the city government, the county government, the State government or the Federal Government.

And thanks to my high school bandmaster, Mr. Kenneth Days, who called his fraternity brother, Donald L. Hollowell, a civil rights lawyer, and said, "That Jordan boy is a fine boy, and you ought to consider him for a job at your law firm," that's when I learned about job referral, and that job referral by Kenneth Days, now going to Don Hollowell, got me a job as a civil rights lawyer working for Don Hollowell for $35 a week.

I have never forgotten Kenneth Days' generosity. And given the fact that all of the other doors for employment as a black lawyer graduating from Howard University were open to me, that's always—that's always been etched in my heart and my mind, and as a result, because I stand on Mr. Days' shoulders and Don Hollowell's shoulders, I felt some responsibility to the extent that I could be helpful or got in a position to be helpful, that I would do that.

And there is I think ample evidence, both in the media and by individuals across this country, that at such times that I have been presented with that opportunity that I have taken advantage of that opportunity, and I think that I have been successful at it.

Q. Was your assistance to Ms. Lewinsky which you have described in any way dependent upon her doing anything whatsoever in the Paula Jones case?

A. No.

IN THE SENATE OF THE UNITED STATES SITTING FOR THE TRIAL OF THE IMPEACHMENT OF WILLIAM JEFFERSON CLINTON, PRESIDENT OF THE UNITED STATES

EXCERPTS OF VIDEO DEPOSITION OF SIDNEY BLUMENTHAL

(Wednesday, February 3, 1999, Washington, D.C.)

SENATOR SPECTER: If none, I will swear the witness.

Mr. Blumenthal, will you please stand up and raise your right hand?

You, Sidney Blumenthal, do swear that the evidence you shall give in this case now pending between the United States and William Jefferson Clinton, President

of the United States, shall be the truth, the whole truth, and nothing but the truth, so help you, God?

MR. BLUMENTHAL: I do.

Whereupon, SIDNEY BLUMENTHAL was called as a witness and, after having been first duly sworn by Senator Specter, was examined and testified as follows:

SENATOR SPECTER: Thank you.

THE WITNESS: Thank you.

SENATOR SPECTER: The House Managers may begin their questioning.

MR. ROGAN: Thank you, Senator.

EXAMINATION BY HOUSE MANAGERS

BY MR. ROGAN:

Q. Mr. Blumenthal, first, good morning.

A. Good morning to you.

Q. My name is Jim Rogan. As you know, I am one of the House Managers and will be conducting this deposition pursuant to authority from the United States Senate.

First, as a preliminary matter, we have never had the pleasure of meeting or speaking until this morning, correct?

A. That's correct.

Q. If any question I ask is unclear or is in any way ambiguous, if you would please call that to my attention, I will be happy to try to restate it or rephrase the question.

A. Thank you.

Q. Mr. Blumenthal, where are you currently employed?

A. At the White House.

Q. Is that in the Executive Office of the President?

A. It is.

Q. What is your current title?

A. My title is Assistant to the President.

Q. Was that your title on January 21st, 1998?

A. It was.

Q. For the record, that is the date that The Washington Post story appeared that essentially broke the Monica Lewinsky story?

A. Yes.

Q. On that date, were you the Assistant to the President as to any specific subject matter?

A. I dealt with a variety of areas.

Q. Did your duties entail any specific matter, or were you essentially a jack-of-all-trades at the White House for the President?

A. Well, I was hired to help the President develop his ideas and themes about the new consensus for the country, and I was hired to deal with problems like the impact of globalization, democracy internationally and domestically, the future of civil society, and the Anglo-American Project; and I also was hired to work on major speeches.

Q. You testified previously that your duties are such as the President and Chief of Staff shall decide. Would that be a fair characterization?

A. Oh, yes.

Q. How long have you been employed in this capacity?

A. Since August 11th, 1997.

Q. And in the course of your duties, do you personally advise the President as to the matters that you just shared with us?

A. Yes.

Q. How often do you meet with the President personally to advise him?

A. It varies. Sometimes several times a week; sometimes I go without seeing him for a number of weeks at a time.

Q. Is dealing with the media part of your—your job?

A. Yes. It's part of my job and part of the job of most people in the White House.

Q. Was that also one of your responsibilities on January 21st, 1998, when the Monica Lewinsky story broke?

A. Yes.

Q. You previously testified that you had a role in the Monica Lewinsky matter after the story broke in The Washington Post on that date, at least in reference to your White House duties; is that correct?

A. I'm unclear on what you mean by "a role."

Q. Specifically, you testified that you attended meetings in the White House in the Office of Legal Counsel in the morning and in the evening almost every day once the story broke?

A. Yes.

Q. And what times did those meetings occur after the story broke, these regular meetings?

A. The morning meetings occurred around 8:30, after the morning message meeting, and the evening meetings occurred around 6:45.

Q. Are those meetings still ongoing?

A. No.

Q. Can you tell me when those meetings ended?

A. Oh, I'd say about the time that the impeachment trial started.

Q. That would be about a month or—about a month ago?

A. Yeah, something like that.

Q. Thank you.

A. I don't recall exactly.

Q. Sure. But up until that point, were these essentially regularly scheduled meetings, twice a day, 8:30 in the morning and 6:45 in the evening?

A. Right.

Q. Did you generally attend those meetings?

A. Generally.

Q. Now, initially, when you testified before the grand jury on February 26th, 1998, your first grand jury appearance, you stated that these twice-daily meetings dealt exclusively with the Monica Lewinsky matter, correct?

A. They dealt with our press reaction, how we would respond to press reports dealing with it. This was a huge story, and we were being inundated with hundreds of calls.

Q. Right.

A. So—

Q. What I'm—what I'm trying to decipher is that at least initially, at the time of your first grand jury appearance, which was about a month after the story broke—

A. Right.

Q. —the meetings were exclusively related to Monica Lewinsky. Is that correct?

A. Pretty much.

Q. And then, 4 months later, when you testified before the grand jury in June, you said these meetings were still ongoing, and you referenced them at that time as discussing the policy, political, legal and media impact of scandals and how to deal with them. Do you remember that testimony?

A. If I could see it.

Q. Certainly. I'm happy to invite your attention to your grand jury testimony of June 4th, 1998, page 25, lines 1 through 5.

MR. ROGAN: And that would be, for the Senators' and counsel's benefit—I believe that's in Tab 4 of the materials provided.

[Witness perusing document.]

THE WITNESS: Right. I see it.

BY MR. ROGAN:

Q. You've had a chance to review that, Mr. Blumenthal?

A. I have.

Q. And that—that's correct testimony?

A. Yes.

Q. Thank you.

At the time you spoke of—you used the word "scandals" in the plural, and you were asked on June 4th what other scandals were discussed and you said they range from the Paula Jones trial to our China policy. Is that a fair statement?

A. Oh, yes, yes. I do.

Q. Who typically attended those meetings?

A. As I recall, there were about a dozen or so people, sometimes more, sometimes less.

Q. Do you remember the names of the people?

A. I'll try to.

Q. Would it be helpful if I directed your attention to a couple of passages in the grand jury testimony?

A. Sure, if you'd like.

MR. ROGAN: Inviting the Senate and counsel's attention to the February 26th grand jury testimony, page 11, lines 2 through 16.

[Witness perusing document.]

THE WITNESS: Sure. Yeah.

BY MR. ROGAN:

Q. That would be Tab Number 1.

A. Right, I see that.

What it says here is that the names listed are Charles Ruff, Lanny Breuer, who is right over here, Cheryl Mills, Bruce Lindsey, John Podesta, Rahm Emanuel, Paul Begala, Jim Kennedy, Mike McCurry, Joe Lockhart, Ann Lewis, Adam Goldberg, Don Goldberg, and that's—those are the names that I—that I recall.

Q. Thank you.

And just for my benefit, Mr. Ruff, Mr. Breuer, Ms. Mills, and Mr. Lindsey, those are all White House counsel?

A. Yes.

Q. Could you just briefly identify for the record the other individuals that are—that are listed in your testimony?

A. Sure. John Podesta was Deputy Chief of Staff. Rahm Emanuel was a Senior Advisor. Paul Begala had the title of Counselor. Jim Kennedy was in the Legal Counsel Office. Mike McCurry was Press Secretary. Joe Lockhart at that time was Deputy Press Secretary. Ann Lewis was Director of Communications, still is. Adam Goldberg worked as a—as an Assistant in the Legal Counsel Office, and Don Goldberg worked in Legislative Affairs.

Q. Thank you.

Mr. Blumenthal, specifically inviting your attention to January 21st, 1998, you testified before the grand jury that on that date, you personally spoke to the President regarding the Monica Lewinsky matter, correct?

A. Yes.

Q. When you spoke to the President, did you discuss The Washington Post story about Ms. Lewinsky that appeared that morning?

A. I don't recall if we talked about that article specifically.

Q. Do you recall on June 25th testifying before the grand jury, and I'm quoting, "We were speaking about the story that appeared that morning"?

A. Right. We were—we were speaking about that story, but I don't know if we referred to The Post.

Q. Thank you.

You are familiar with The Washington Post story that broke that day?

A. I am.

Q. That story essentially stated that the Office of Independent Counsel was investigating whether the President made false statements about his relationship with Ms. Lewinsky in the Jones case, correct, to the best of your recollection?

A. If you could repeat that?

Q. Sure. The story stated that the Office of Independent Counsel was investigating whether the President made false statements about his relationship with Ms. Lewinsky in the Jones case.

A. Right.

Q. And also that the Office of Independent Counsel was investigating whether the President obstructed justice in the Jones case. Is that your best recollection of what that story was about?

A. Yes.

Q. How did you end up speaking to the President on that specific date?

A. I don't remember exactly whether he had summoned me or whether I had asked to speak him—to him.

Q. And I realize, by the way, I—just so you know, I'm not trying to trick you or anything. I realize this is a year later—

A. Right.

Q. —and your testimony was many months ago, and so if I invite your attention to previous grand jury testimony to refresh your recollection, I don't want you to feel that in any way I'm trying to imply that you're not being candid in your testimony.

With that, if I may invite your—your attention to the June 4th grand jury testimony on page 47, lines 5 through 6.

[Witness perusing document.]

BY MR. ROGAN:

Q. Let me see if this helps to refresh your recollection. You said, "It was about a week before the State of the Union speech."

A. I see.

Q. "I was in my office, and the President asked me to come to his office."

Does that help to refresh your recollection?

A. Yes.

Q. And so you now remember that the President asked to speak with you?

A. Yes.

Q. Did you go to the Oval Office?
A. Yes.
Q. During that conversation, were you alone with the President?
A. I was.
Q. Do you remember if the door was closed?
A. It was.
Q. When you met with the President, did you relate to him a conversation you had with the First Lady earlier that day?
A. I did.
Q. What did you tell the President the First Lady told you earlier that day?
A. I believe that I told him that the First Lady had called me earlier in the day, and in the light of the story in The Post had told me that the President had helped troubled people in the past and that he had done it many times and that he was a compassionate person and that he helped people also out of his religious conviction and that this was part of—part of his nature.
Q. And did she also tell you that one of the other reasons he helped people was out of his personal temperament?
A. Yes. That's what I mean by that.
Q. And the First Lady also at least shared with you her opinion that he was being attacked for political motives?
MR. McDANIEL: Can I get a clarification, Senator—Senator Specter? The earlier question, I thought, had been what Mr. Blumenthal had relayed to the President had been said by the First Lady.
MR. ROGAN: That's correct.
MR. McDANIEL: And now the questions are back—it seems to me have moved to another topic—
MR. ROGAN: No. That's—
MR. McDANIEL: —which is what—
MR. ROGAN: I'm—
MR. McDANIEL: —did the First Lady say.
MR. ROGAN: And I thank—I thank the gentleman for that clarification. I'm specifically asking what the witness relayed to the President respecting his conversation with—his earlier conversation with the First Lady.
MR. McDANIEL: Thank you.
Do you understand that, what he said?
THE WITNESS: I understand the distinction, and I don't—
BY MR. ROGAN:
Q. I'll restate the question, if that would help.
A. Please.
Q. Do you remember telling the President that the First Lady said to you that she felt that with—in reference to this story that he was being attacked for political motives?
A. I remember her saying that to me, yes.
Q. And you relayed that to the President?
A. I'm not sure I relayed that to the President. I may have just relayed the gist of the conversation to him. I don't—I'm not sure whether I relayed the entire conversation.
MR. ROGAN: Inviting the Senators' and counsel's attention to the June 4th, 1998, testimony of Mr. Blumenthal, page 47, beginning at line 5.
BY MR. ROGAN:
Q. Mr. Blumenthal, let me just read a passage to you and tell me if this helps to refresh your memory.
A. Mm-hmm.
MR. ROGAN: Do you have that, Lanny?
MR. BREUER: Yes, I do. Thank you.
BY MR. ROGAN:
Q. Reading at line—at line 5, "I was in my office, and the President asked me to come to the Oval Office. I was seeing him frequently in this period about the State of the Union and Blair's visit"—and I—that was Prime Minister Tony Blair, as an aside, correct?
A. That's right.
Q. Thank you.
And then again, reading at line 7, "So I went up to the Oval Office and I began the discussion, and I said that I had received—that I had spoken to the First Lady that day in the afternoon about the story that had broke in the morning, and I related to the President my conversation with the First Lady and the conversation went as follows. The First Lady said that she was distressed that the President was being attacked, in her view, for political motives for his ministry of a troubled per-

son. She said that the President ministers to troubled people all the time," and then it goes on to—

A. Right.

Q. —relate the substance of the answer you just gave.

Does that help to refresh your recollection with respect to what you told the President, the First Lady had said earlier?

A. Yes.

Q. Thank you.

And do you now remember that the First Lady had indicated to you that she felt the President was being attacked for political motives?

A. Well, I remember she said that to me.

Q. And just getting us back on track, a few moments ago, I think you—you shared with us that the First Lady said that the President helped troubled people and he had done it many times in the past.

A. Yes.

Q. Do you remember testifying before the grand jury on that subject, saying that the First Lady said he has done this dozens, if not hundreds, of times with people—

A. Yes.

Q. —with troubled people?

A. I recall that.

Q. After you related the conversation that you had with the First Lady to the President, what do you remember saying to the President next about the subject of Monica Lewinsky?

A. Well, I recall telling him that I understood he felt that way, and that he did help people, but that he should stop trying to help troubled people personally; that troubled people are troubled and that they can get you in a lot of messes and that you had to cut yourself off from it and you just had to do it. That's what I recall saying to him.

Q. Do you also remember in that conversation saying to him, "You really need to not do that at this point, that you can't get near anybody who is even remotely crazy. You're President"?

A. Yes. I think that was a little later in the conversation, but I do recall saying that.

Q. When you told the President that he should avoid contact with troubled people, what did the President say to you in response?

A. I'm trying to remember the sequence of it. He—he said that was very difficult for him. He said he—he felt a need to help troubled people, and it was hard for him to—to cut himself off from doing that.

Q. Do you remember him saying specifically, "It's very difficult for me to do that, given how I am. I want to help people"?

A. I recall—I recall that.

Q. And when the President referred to trying to help people, did you understand him in that conversation to be referring to Monica Lewinsky?

A. I think it included Monica Lewinsky, but also many others.

Q. Right, but it was your understanding that he was all—he was specifically referring to Monica Lewinsky in that list of people that he tried to help?

A. I believe that—that was implied.

Q. Do you remember being asked that question before the grand jury and giving the answer, "I understood that"?

A. If you could point it out to me, I'd be happy to see it.

Q. Certainly.

MR. ROGAN: Inviting the Senators' and counsel's attention to the June 25th, 1998, grand jury, page 5, I believe it's at lines 6 through 8.

[Witness perusing document.]

THE WITNESS: Yes, I see that. Thank you.

By MR. ROGAN:

Q. You recall that now?

A. Yes.

Q. Thank you.

Mr. Blumenthal, did the President then relate a conversation he had with Dick Morris to you?

A. He did.

Q. What was the substance of that conversation, as the President related it to you?

A. He said that he had spoken to Dick Morris earlier that day, and that Dick Morris had told him that if Nixon, Richard Nixon, had given a nationally televised speech at the beginning of the Watergate affair, acknowledging everything he had

done wrong, he may well have survived it, and that was the conversation that Dick Morris—that's what Dick Morris said to the President.

Q. Did it sound to you like the President was suggesting perhaps he would go on television and give a national speech?

A. Well, I don't know. I didn't know.

Q. And when the President related the substance of his conversation with Dick Morris to you, how did you respond to that?

A. I said to the President, "Well, what have you done wrong?"

Q. Did he reply?

A. He did.

Q. What did he say?

A. He said, "I haven't done anything wrong."

Q. And what did you say to that response?

A. Well, I said, as I recall, "That's one of the stupidest ideas I ever heard. If you haven't done anything wrong, why would you do that?"

Q. Did the President then give you his account of what happened between him and Monica Lewinsky?

A. As I recall, he did.

Q. What did the President tell you?

A. He, uh—he spoke, uh, fairly rapidly, as I recall, at that point and said that she had come on to him and made a demand for sex, that he had rebuffed her, turned her down, and that she, uh, threatened him. And, uh, he said that she said to him, uh, that she was called "the stalker" by her peers and that she hated the term, and that she would claim that they had had an affair whether they had or they hadn't, and that she would tell people.

Q. Do you remember him also saying that the reason Monica Lewinsky would tell people that is because then she wouldn't be known by her peers as "the stalker" anymore?

A. Yes, that's right.

Q. Do you remember the President also saying that—and I'm quoting—"I've gone down that road before. I've caused pain for a lot of people. I'm not going to do that again"?

A. Yes. He told me that.

Q. And that was in the same conversation that you had with the President?

A. Right, in—in that sequence.

Q. Can you describe for us the President's demeanor when he shared this information with you?

A. Yes. He was, uh, very upset. I thought he was, a man in anguish.

Q. And at that point, did you repeat your earlier admonition to him as far as not trying to help troubled people?

A. I did. I—I think that's when I told him that you can't get near crazy people, uh, or troubled people. Uh, you're President; you just have to separate yourself from this.

Q. And I'm not sure, based on your testimony, if you gave that admonition to him once or twice. Let me—let me clarify for you why my questioning suggested it was twice. In your grand jury testimony on June the 4th, at page 49, beginning at line 25, you began the sentence by saying, and I quote, "And I repeated to the President"—

A. Right.

Q. —"that he really needed never to be near people who were"—

A. Right.

Q. —"troubled like this," and so forth. Do you remember now if you—if that was correct? Did you find yourself in that conversation having to repeat the admonition to him that you'd given earlier?

A. I'm sure I did. Uh, I felt—I felt that pretty strongly. He shouldn't be involved with troubled people.

Q. Do you remember the President also saying something about being like a character in a novel?

A. I do.

Q. What did he say?

A. Uh, he said to me, uh, that, uh, he felt like a character in a novel. Uh, he felt like somebody, uh, surrounded by, uh, an oppressive environment that was creating a lie about him. He said he felt like, uh, the character in the novel *Darkness at Noon*.

Q. Did he also say he felt like he can't get the truth out?

A. Yes, I—I believe he said that.

Q. Politicians are always loathe to confess their ignorance, particularly on videotape. I will do so. I'm unfamiliar with the novel *Darkness at Noon*. Did you—do you

have any familiarity with that, or did you understand what the President meant by that?

A. I—I understood what he meant. I—I was familiar with the book.

Q. What—what did he mean by that, per your understanding?

A. Uh, the book is by Arthur Koestler, who was somebody who had been a communist and had become disillusioned with communism. And it's an anti-communist novel. It's about, uh, uh, the Stalinist purge trials and somebody who was a loyal communist who then is put in one of Stalin's prisons and held on trial and executed, uh, and it's about his trial.

Q. Did you understand what the President was trying to communicate when he related his situation to the character in that novel?

A. I think he felt that the world was against him.

Q. I thought only Members of Congress felt that way.

Mr. Blumenthal, did you ever ask the President if he was ever alone with Monica Lewinsky?

A. I did.

Q. What was his response?

A. I asked him a number of questions that appeared in the press that day. I asked him, uh, if he were alone, and he said that, uh, he was within eyesight or earshot of someone when he was with her.

Q. What other questions do you remember asking him?

A. Uh, there was a story in the paper that, uh, there were recorded messages, uh, left by him on her voice-mail and I asked him if that were true.

Q. What did he say?

A. He said, uh, that it was, that, uh, he had called her.

Q. You had asked him about a press account that said there were potentially a number of telephone messages left by the President for Monica Lewinsky. And he relayed to you that he called her. Did he tell you how many times he called her?

A. He—he did. He said he called once. He said he called when, uh, Betty Currie's brother had died, to tell her that.

Q. And other than that one time that he shared that information with you, he shared no other information respecting additional calls?

A. No.

Q. He never indicated to you that there were over 50 telephone conversations between himself and Monica Lewinsky?

A. No.

Q. Based on your conversation with the President at that time, would it have surprised you to know that there were over 50—there were records of over 50 telephone conversations with Monica Lewinsky and the President?

A. Would I have been surprised at that time?

Q. Yes.

A. Uh, I—to see those records and if he—I don't fully grasp the question here. Could you—would I have been surprised?

Q. Based on the President's response to your question at that time, would it have surprised you to have been told or to have later learned that there were over 50 recorded—50 conversations between the President and Ms. Lewinsky?

A. I did later learn that, uh, as the whole country did, uh, and I was surprised.

Q. When the President told you that Monica Lewinsky threatened him, did you ever feel compelled to report that information to the Secret Service?

A. No.

Q. The FBI or any other law enforcement organization?

A. No.

Q. I'm assuming that a threat to the President from somebody in the White House would normally send off alarm bells among staff.

A. It wouldn't—

MR. McDANIEL: Well, I'd like to object to the question, Senator. There's no testimony that Mr. Blumenthal learned of a threat contemporaneously with it being made by someone in the White House. This is a threat that was relayed to him sometime afterwards by someone who was no longer employed in the White House. So I think the question doesn't relate to the testimony of this witness.

MR. ROGAN: Respectfully, I'm not sure what the legal basis of the objection is. The evidence before us is that the President told the witness that Monica Lewinsky threatened him.

[Senators Specter and Edwards conferring.]

SENATOR SPECTER: We've conferred and overrule the objection on the ground that it calls for an answer; that, however the witness chooses to answer it, was not a contemporaneous threat, or he thought it was stale, or whatever he thinks. But the objection is overruled.

MR. ROGAN: Thank you.

BY MR. ROGAN:

Q. Let me—let me restate the question, if I may. Mr. Blumenthal, would a threat—

SENATOR SPECTER: We withdraw the ruling.

[Laughter.]

MR. McDANIEL: I withdraw my objection, then.

[Laughter.]

MR. ROGAN: Senator Specter, the ruling is just fine by my light. I'm just going to try to simplify the question for the witness' benefit.

SENATOR SPECTER: We'll hold in abeyance a decision on whether to reinstate the ruling.

MR. ROGAN: Thank you. Maybe I should just quit while I'm ahead and have the question read back.

BY MR. ROGAN:

Q. Basically, Mr. Blumenthal, what I'm asking is, I mean, normally, would a threat from somebody against the President in the White House typically require some sort of report being made to a law enforcement agency?

A. Uh, in the abstract, yes.

Q. This conversation that you had with the President on January the 21st, 1998, how did that conversation conclude?

A. Uh, I believe we, uh—well, I believe after that, I said to the President that, uh—who was—seemed to me to be upset, that you needed to find some sure footing and to be confident. And, uh, we went on, I believe, to discuss the State of the Union.

Q. You went on to other business?

A. Yes, we went on to talk about public policy.

Q. When this conversation with the President concluded as it related to Monica Lewinsky, what were your feelings toward the President's statement?

A. Uh, well, they were complex. Uh, I believed him, uh, but I was also, uh—I thought he was very upset. That troubled me. And I also was troubled by his association with troubled people and thought this was not a good story and thought he shouldn't be doing this.

Q. Do you remember also testifying before the grand jury that you felt that the President's story was a very heartfelt story and that "he was pouring out his heart, and I believed him"?

A. Yes, that's what I told the grand jury, I believe; right.

Q. That was—that was how you interpreted the President's story?

A. Yes, I did. He was, uh—he seemed—he seemed emotional.

Q. When the President told you he was helping Monica Lewinsky, did he ever describe to you how he might be helping or ministering to her?

A. No.

Q. Did he ever describe how many times he may have tried to help or minister to her?

A. No.

Q. Did he tell you how many times he visited with Monica Lewinsky?

A. No.

Q. Did he tell you how many times Monica Lewinsky visited him in the Oval Office complex?

A. No.

Q. Did he tell you how many times he was alone with Monica Lewinsky?

A. No.

Q. He never described to you any intimate physical activity he may have had with Monica Lewinsky?

A. Oh, no.

Q. Did the President ever tell you that he gave any gifts to Monica Lewinsky?

A. No.

Q. Did he tell you that Monica Lewinsky gave him any gifts?

A. No.

Q. Based on the President's story as he related on January 21st, would it have surprised you to know at that time that there was a repeated gift exchange between Monica Lewinsky and the President?

A. Well, I learned later about that, and I was surprised.

Q. The President never told you that he engaged in occasional sexual banter with her on the telephone?

A. No.

Q. He never told you about any cover stories that he and Monica Lewinsky may have developed to disguise a relationship?

A. No.

Q. He never suggested to you that there might be some physical evidence pointing to a physical relationship between he—between himself and Monica Lewinsky?

A. No.

Q. Did the President ever discuss his grand jury—or strike that.

Did the President ever discuss his deposition testimony with you in the Paula Jones case on that date?

A. Oh, no.

Q. Did he ever tell you that he denied under oath in his Paula Jones deposition that he had an affair with Monica Lewinsky?

A. No.

Q. Did the President ever tell you that he ministered to anyone else who then made a sexual advance toward him?

A. No.

Q. Mr. Blumenthal, after you testified before the grand jury, did you ever communicate to the President the questions that you were asked?

A. No.

Q. After you testified before the grand jury, did you ever communicate to the President the answers which you gave to those questions?

A. No.

Q. After you were subpoenaed to testify but before you testified before the Federal grand jury, did the President ever recant his earlier statements to you about Monica Lewinsky?

A. No.

Q. After you were subpoenaed but before you testified before the federal grand jury, did the President ever say that he did not want you to mislead the grand jury with a false statement?

A. No. We didn't have any subsequent conversation about this matter.

Q. So it would be fair also to say that after you were subpoenaed but before you testified before the Federal grand jury, the President never told you that he was not being truthful with you in that January 21st conversation about Monica Lewinsky?

A. Uh, he never spoke to me about that at all.

Q. The President never instructed you before your testimony before the grand jury not to relay his false account of his relationship with Monica Lewinsky?

A. We—we didn't speak about anything.

Q. And as to your testimony on all three appearances before the grand jury on February 26th, June 4th and June 25th, 1998—as an aside, by the way, let me just say I think this question has been asked of all the witnesses, so this is not peculiar to you—but as to those three grand jury appearances, do you adopt as truth your testimony on all three of those occasions?

A. Oh, yes.

MR. ROGAN: If I may have a moment?

SENATOR SPECTER: Of course. Would you like a short break?

MR. ROGAN: That might be convenient, Senator.

SENATOR SPECTER: All right. It's a little past 10. We'll take a 5-minute recess.

THE VIDEOGRAPHER: We're going off the record at 10 o'clock a.m.

[Recess.]

THE VIDEOGRAPHER: We're going back on the record at 10:12 a.m.

SENATOR SPECTER: We shall proceed; Mr. Graham questioning for the House Managers.

MR. GRAHAM: Thank you, Senator.

BY MR. GRAHAM:

Q. Again, Mr. Blumenthal, if I ask you something that's confusing, just slow me down and straighten me out here.

A. Thank you.

Q. Okay. I'm going to ask as direct, to-the-point questions as I can so we all can go home.

June 4th, 1998, when you testified to the grand jury, on page 49—I guess it's page 185 on tab 4.

MR. McDANIEL: Page 49?

MR. GRAHAM: Yes, sir.

MR. McDANIEL: Thank you.

BY MR. GRAHAM:

Q. That's where you start talking about the story that the President told you. Knowing what you know now, do you believe the President lied to you about his relationship with Ms. Lewinsky?

A. I do.

Q. I appreciate your honesty. You had raised executive privilege at some time in the past, I believe.

MR. McDANIEL: I object, Senator. Mr. Blumenthal was a passive vessel for the raising of executive privilege by the President. It's not his privilege to assert, so the question, I think, is misleading.

BY MR. GRAHAM:

Q. At any time—I'm sorry.

[Senators Specter and Edwards conferring.]

SENATOR SPECTER: Senator Edwards and I have conferred and believe that he can answer the question if he did not raise the privilege, so we will overrule the objection.

SENATOR EDWARDS: Either he asserted it or it was asserted on his behalf.

THE WITNESS: If you could repeat it, please.

BY MR. GRAHAM:

Q. I believe early on in your testimony and throughout your testimony to the grand jury, the idea of executive privilege covering your testimony or conversations with the President was raised. Is that correct?

A. It was.

Q. Do you believe the White House knew that this privilege would be asserted in your testimony? That was no surprise to them?

A. Uh—

MR. BREUER: I'm going to object. It's the White House's privilege to assert it could not have been surprised. It's a mischaracterization of the facts.

[Senators Specter and Edwards conferring.]

SENATOR SPECTER: Senator Edwards and I believe the objection is well-founded on the ground that he cannot testify as to what someone else knew. So would you rephrase the question? The objection will be sustained.

BY MR. GRAHAM:

Q. When executive privilege was asserted, do you know how it came about? Do you have any knowledge of how it came about?

A. What I recall is that I—in my first appearance before the grand jury, I was asked questions about my conversations with the President. And I went out into the hall, asked if I could go out in the hall, and I spoke with the White House legal counsel who was there, Cheryl Mills, and said, "What do I say?"

Q. And she said?

A. And I was advised to assert privilege.

Q. So the executive privilege assertion came about from advice to you by White House counsel?

A. Yes.

Q. Now, you've stated, I think, very honestly, and I appreciate, that you were lied to by the President. Is it a fair statement, given your previous testimony concerning your 30-minute conversation, that the President was trying to portray himself as a victim of a relationship with Monica Lewinsky?

A. I think that's the import of his whole story.

Q. During this period of time, the Paula Jones lawsuit, other allegations about relationships with the President and other women were being made and found their way in the press. Is that correct?

A. Yes.

Q. Now, when you have these morning meetings and evening meetings about press strategy, I believe your previous testimony goes along the lines that any time a press report came out about a story between the President and a woman, that you would sit down and strategize about what to do. Is that correct?

A. Well, we would, uh, talk about what the White House spokesman would say about it.

Q. Does the name "Kathleen Willey" mean anything to you in that regard?

MR. BREUER: I'm going to object. It's beyond the scope of this deposition. In the proffer from the Managers, they explicitly state the areas that they want to go into, and they explicitly state that they want to speak to Mr. Blumenthal about his January 21, 1998, conversation with the President about Monica Lewinsky. And any aspects as to Kathleen Willey are—have nothing to do with the Articles of Impeachment, nor do they have anything to do with the proffer made by the Managers, and it's beyond the scope of this deposition.

SENATOR SPECTER: Just wait one second.

[Senators Specter and Edwards conferring.]

SENATOR SPECTER: Mr. Graham, as you know, the scope of the examination of Mr. Blumenthal is limited by the subject matters reflected in the Senate record. Are you able to substantiate the Senate record as a basis for asking the question?

MR. GRAHAM: I'm assuming, yes, Senator, that the grand jury testimony of Mr. Blumenthal is part of the Senate record. And on June 25th, 1998, on page 21, there's a discussion between Mr. Blumenthal and the Independent Counsel's Office about strategy meetings and other women, and in that testimony, he mentions that "we discussed Paula Jones, Kathleen Willey, in our strategy meeting."

And I think the question will not be as ominous as some may think it sounds. I think I can get right to the point pretty quickly about what I'm trying to do with—

SENATOR SPECTER: Well, would you make an offer of proof so that we can see what the scope is that you have in mind?

MR. GRAHAM: Basically, his testimony is that when a press report came about concerning Ms. Jones or Kathleen Willey or a relationship between the President and another woman, they sat down and strategized about how to respond to those press accounts, what to do and what to say—at least that's what his testimony indicates. And I just want to ask him, once the January 21st story about Ms. Lewinsky came out, how they discussed her in relationship to other strategy meetings.

SENATOR SPECTER: Mr. Breuer, how would you respond to Congressman Graham's statement that as he refers to a reference to Ms. Willey in the record?

MR. BREUER: Senator, I haven't seen the one reference, but I may—I would acknowledge that there may be one passing reference to Ms. Willey in the voluminous materials that are before us here in the grand jury, Senator. But it's clearly not germane to this deposition. It's clearly not germane to the proffer made by the Managers about why Mr. Sidney Blumenthal was a witness. It is clearly not germane to the Articles of Impeachment.

And, indeed, in Mr. Lindsey Graham's proffer just now, he said that he wants to go back and ask about the January 21 conversation. It's my view that Kathleen Willey is tangential, at best, and is not germane to this deposition and ought not to be inquired into.

SENATOR EDWARDS: And, Senator Specter, I would ask that we go off the record for this discussion, given the question of whether this is within the scope of the Senate record.

SENATOR SPECTER: We shall go off the record.

THE VIDEOGRAPHER: We're going off the record at 10:20 a.m.

[Discussion off the record.]

THE VIDEOGRAPHER: We're going back on the record at 10:48 a.m.

SENATOR SPECTER: Congressman Lindsey, you may proceed.

MR. GRAHAM: Thank you, sir.

BY MR. GRAHAM:

Q. Thank you for your patience, Mr. Blumenthal. I appreciate it.

A. Thank you.

Q. Let's get back to the—we'll approach this topic another way and we'll try to tie it up at the end here.

The January 21st article breaks, and I think it's in The Washington Post, is that correct, the January 21st article about Ms. Lewinsky being on tape, talking about her relationship with the President? Are you familiar with that article?

A. I'm familiar with an article on January 21st in The Washington Post.

Q. And what—what was the essence of that article, as you remember it?

A. If you have it there, I'd be happy to look at it.

Q. Yeah. Let's see if we can find it, what tab that is. Tab 7.

[Witness perusing document.]

THE WITNESS: Well—

BY MR. GRAHAM:

Q. If you'd like a chance to read it over, just take your time.

A. Yes. Thank you.

[Witness perusing document.]

THE WITNESS: It's a long article.

BY MR. GRAHAM:

Q. Yes, sir, it is, and just—

A. Yeah.

Q. —just take your time. I'm not going to give you a test on the article. I just wanted—

A. No. I just wanted to read it.

Q. —to refresh your memory. Absolutely, you take your time.

A. I hope you don't mind if I took the time here.

Q. No, sir. Are you—you're okay now?

A. I am.

Q. Okay. In essence, what this article is—is alleging is what we now know, the allegations that Ms. Lewinsky had a relationship with the President, that Mr. Jordan was trying to help her secure counsel, to file an affidavit saying they had no

relationship, and the relationship on January 21st was being exposed through some tape recordings, supposedly, the Independent Counsel had access to between Ms. Lewinsky and Ms. Tripp. Is that correct?

A. Well, there are a lot of questions in there.

Q. Okay, yeah, and I'm sorry.

This article seems to suggest that Ms. Lewinsky is telling a friend—

A. Mm-hmm.

Q. —that she has a relationship with the President, a sexual relationship with the President.

A. Mm-hmm.

Q. You understand that from the article?

A. Yes.

Q. This article also alleges that an affidavit was filed by Ms. Lewinsky denying that relationship, and Mr. Jordan sought an attorney for her, a friend of the President. Is that correct?

A. It says she filed an affidavit, and I'm just looking for where it says that Jordan had secured the attorney.

Q. The very first paragraph, let me read it. "The Independent Counsel Kenneth Starr has expanded his investigation of President Clinton to examine whether Clinton and his close friend, Vernon Jordan, encouraged a 24-year-old"—

A. Right.

Q. —"former White House intern to lie to lawyers for Paula Jones about whether the intern had an affair with the President, sources close to the investigation said yesterday."

A. Right.

Q. So I guess that first paragraph kind of sums up the accusation.

A. I think—

Q. What type reaction did the White House have when this—as you recall—when this article came to light?

A. I—I think the White House was overwhelmed with press inquiries.

Q. Was there a sense of alarm that this was a bad story?

A. Yes.

Q. And wasn't there a sense of reassurance by the President himself that this was an untrue story?

A. The President did make a public statement that afternoon.

Q. And I believe White House officials on his behalf denied the essence of this story; is that correct?

A. Yes.

Q. And basically, you were passing along what somebody you trust and admire told you to be the case, and from the White House point of view, that was the response to this story, that we deny these allegations.

MR. McDANIEL: Senator, I really object to the question where we mix "you" and "we" and the "White House." I'd like, if possible, for the question—if they want to know what Mr. Blumenthal did, to ask him what he did, and questions about what the White House did and what we and you did.

MR. GRAHAM: That's fair enough.

MR. McDANIEL: Okay, we thank you.

SENATOR SPECTER: We think that's well-founded.

MR. GRAHAM: Yes, and I agree. I agree that is well-founded.

BY MR. GRAHAM:

Q. Did you have any discussions with White House press people about the nature of this relationship after this article broke?

A. No.

Q. Did you have any discussions with White House lawyers after this article broke about the nature of the relationship?

A. No.

Q. After you had the conversation with the President, sometime the week of the 21st—I believe that's your testimony—shortly after the news story broke, this 30-minute conversation where he tells you about—

A. There's not a question.

Q. Okay. Is that correct? When did you have this conversation with the President? Do you recall?

A. Yes. It was in the early evening of January 21st.

Q. Early evening of January 21st?

A. Yes.

Q. The same day the story was reported?

A. Yes.

Q. Okay. So, from your point of view, this was something that needed to be addressed?

MR. McDANIEL: Your Honor, I—Senator, I object to the question about "this" is something that needs to be addressed. I don't understand what the "this" is, exactly, that the question refers to. Does it refer to the story? Does it refer to the President's statement to Mr. Blumenthal?

SENATOR SPECTER: Well, we think—Senator Edwards and I concur that the witness can answer the question. If he does not understand it, he can say so and then can have the question rephrased.

BY MR. GRAHAM:

Q. You have a conversation with the President on the same day the article comes out, and the conversation includes a discussion about the relationship between him and Ms. Lewinsky. Is that correct?

A. Yes.

Q. Okay. So it was certainly on people's minds, including the President, is that correct, the essence of this story?

MR. McDANIEL: I object to the question about whether it's on people's minds. I think he can answer about what he knew or about what he learned from people who spoke to him, but the question goes far beyond that.

BY MR. GRAHAM:

Q. Well, let me ask you this. We know it was on the President's mind.

SENATOR SPECTER: Senator Edwards and I think that, technically, that's correct, and perhaps you can avoid it by just pinpointing it just a little more.

MR. GRAHAM: Yes. We'll try to be laser-like in these questions.

BY MR. GRAHAM:

Q. You had a conversation with the President of the United States about his relationship with Ms. Lewinsky on the same day The Washington Post article came out. That's correct? Yes or no?

A. That—I—I—that's right.

Q. Okay. During that period of time, that day or any day thereafter, were you involved in any meeting with White House lawyers or press people where the conversation—or where the topic of Ms. Lewinsky's allegations or the—Ken Starr's allegations about Ms. Lewinsky came up?

A. I'm confused about which allegations you're talking about.

Q. That she had a relationship with the President, and they were trying to get her to file a false affidavit. Did that topic ever come up in your presence with the Press Secretary, White House press people or lawyers for the White House?

A. I think the whole story was discussed by senior staff in the White House.

Q. When did that begin to occur?

A. I'm sure we were discussing it on January 21st.

Q. Do you recall that every—

A. Every—everyone in the country was talking about it.

Q. Well, do you recall the tenor of that conversation? Do you recall the flavor of it? Can you describe it the best you can, about—was there a sense of alarm, shock? How would you describe it?

A. I think we felt overwhelmed by the crisis atmosphere.

Q. Did anybody ever suggest who is Monica Lewinsky, go find out about who she is and what she does?

A. No.

Q. So is it your testimony that this accusation comes out on January 21st, and the accusation being that a White House intern has an inappropriate relationship with the President, filed a false affidavit on his behalf, and nobody at this meeting suggested let's find out who Monica Lewinsky is and what's going on here?

A. Well, I wasn't referring to any meeting, but in any of my discussions with members of the White House staff, nobody discussed Monica Lewinsky's personal life or decided that we had to find out who she was.

Q. Could I turn you now to Tab 15, please? Okay.

MR. McDANIEL: Would you like him to read this?

MR. GRAHAM: Yes. Yes, please. Just take your time. And I am now referring to an AP story by Karen G-u-l-l-o. I don't want to mispronounce her name.

[Witness perusing document.]

THE WITNESS: I'm ready, Congressman.

BY MR. GRAHAM:

Q. Thank you.

And this article—do you know this reporter, by any chance?

A. I do know this reporter, but I did not know this reporter on January 30th.

Q. All right. Do you subsequently know—

A. Some months later, I met this reporter.

Q. And the basic essence of my question, Mr. Blumenthal, will be this report indicates some derogatory information about Ms. Lewinsky, and it also has some statements by White House Press Secretary and Ms. Lewis. And I want to ask how those two statements go together.

This report indicates that a White House aide called this reporter to suggest that Ms. Lewinsky's past included weight problems, and she was called "The Stalker." And it says that "Junior staff members, speaking on condition that they not be identified, said she was known as a flirt, wore her skirts too short, was "'a little bit weird'." And the next paragraph says: "Little by little, ever since the allegations of an affair between President Clinton and Ms. Lewinsky surfaced 10 days ago, White House sources have waged a behind-the-scenes campaign to portray her as an untrustworthy climber obsessed with the President."

Do you have any direct knowledge or indirect knowledge that such a campaign by White House aides or junior staff members ever existed?

A. No.

Q. Okay. Do you ever remember hearing Ms. Lewis or Mr. McCurry admonishing anyone in the White House about "watch what you say about Ms. Lewinsky"?

A. No. I don't recall those incidents described in this article, but I do note that among senior advisors at one of the meetings that we held—it could have been in the morning or late afternoon—we felt very firmly that nobody should ever be a source to a reporter about a story about Monica Lewinsky's personal life, and I strongly agreed with that and that's what we decided.

Q. When did that meeting occur?

A. I'd say within a week of the story breaking.

Q. Who was at that meeting?

A. I don't recall exactly, but I would say that the list of names that I mentioned before.

Q. And that would be?

A. I may not get them all, but I would say Chuck Ruff, Cheryl Mills, Bruce Lindsey, Lanny Breuer, Jim Kennedy, Mike McCurry, Joe Lockhart, Adam Goldberg, Don Goldberg, Ann Lewis, Paul Begala, Rahm Emanuel, myself.

Q. And this occurred about a week after the January 21st article?

A. I don't recall the exact date.

Q. At least 7 days?

A. Within a week—

Q. Okay.

A. —I believe.

Q. Would it be fair to say that you were sitting there during this conversation and that you had previously been told by the President that he was in essence a victim of Ms. Lewinsky's sexual demands, and you said nothing to anyone?

MR. McDANIEL: Is the question, "You said"—

THE WITNESS: I don't—

MR. McDANIEL: Is the question, "You said nothing to anyone about what the President told you?"?

MR. GRAHAM: Right.

THE WITNESS: I never told any of my colleagues about what the President told me.

BY MR. GRAHAM:

Q. And this is after the President recants his story—recounts his story—to you, where he's visibly upset, feels like he's a victim, that he associates himself with a character who's being lied about, and you at no time suggested to your colleagues that there is something going on here with the President and Ms. Lewinsky you need to know about. Is that your testimony?

A. I never mentioned my conversation. I regarded that conversation as a private conversation in confidence, and I didn't mention it to my colleagues, I didn't mention it to my friends, I didn't mention it to my family, besides my wife.

Q. Did you mention it to any White House lawyers?

A. I mentioned it many months later to Lanny Breuer in preparation for one of my grand jury appearances, when I knew I would be questioned about it. And I certainly never mentioned it to any reporter.

Q. Do you know how, over a period of weeks, stories about Ms. Lewinsky being called a stalker, a fantasizer, obsessed with the President, called the name "Elvira"—do you know how that got into the press?

A. Which—which—which question are you asking me? Which part of that?

Q. Okay. Do you have any idea how White House sources are associated with statements such as "She's known as 'Elvira'," "She's obsessed with the President," "She's known as a flirt," "She's the product of a troubled home, divorced parents," "She's known as 'The Stalker'"? Do you have any idea how that got in the press?

MR. BREUER: I'm going to object. The document speaks for itself, but it's not clear that the terms that Mr. Lindsey has used are necessarily—any or all of them—are from a White House source. I object to the form and the characterization of the question.

MR. GRAHAM: The ones that I have indicated are associated with the White House as being the source of those statements and—

SENATOR SPECTER: Senator Edwards and I think that question is appropriate, and the objection is overruled.

THE WITNESS: I have no idea how anything came to be attributed to a White House source.

BY MR. GRAHAM:

Q. Do you know a Mr. Terry Lenzner?

A. I—I met him once.

Q. When did you meet him?

A. I met him outside the grand jury room.

Q. And who is he?

A. He's a private investigator.

Q. And who does he work for?

A. He works for many clients, including the President.

Q. Okay. Mr. Blumenthal, I appreciate your candor here.

Do you know Mr. Harry Evans?

A. Harold Evans?

Q. Yes, sir.

A. Yes, I do.

Q. Who is Mr. Harold Evans?

A. Harold Evans is—I don't know his exact title right now. He works for Mort Zuckerman, involving his publications, and he's the husband of my former editor, Tina Brown.

Q. Has he ever worked for the New York Daily News?

MR. BREUER: I'm going to object to this line of questioning. It seems well beyond the scope of this deposition. I have never heard of Mr. Harold Evans, and it's not clear to me that's anywhere in this voluminous record or any of these issues.

SENATOR SPECTER: Senator Edwards and I think it would be appropriate to have an offer of proof on this, Congressman Graham.

MR. GRAHAM: I'm going to ask Mr. Blumenthal if he has ever at any time passed on to Mr. Evans or anyone else raw notes, notes, work products from a Mr. Terry Lenzner about subjects of White House investigations to members of the press, to include Ms. Lewinsky.

SENATOR SPECTER: Relating to Monica Lewinsky?

MR. GRAHAM: Yes, and anyone else.

MR. McDANIEL: That's a good question. I think we don't have any objection to that question.

SENATOR SPECTER: Well, we still have to rule on it. Overruled. The objection is overruled.

MR. GRAHAM: All right. Now I think I know the answer.

[Laughter.]

BY MR. GRAHAM:

Q. So let's phrase it very clearly for the record here. You know Mr. Evans; correct?

A. I do.

Q. Have you at any time received any notes, work product from a Mr. Terry Lenzner about anybody?

A. No.

Q. Okay. So, therefore, you had nothing to pass on?

A. Right.

Q. Fair enough. Do you know a Mr. Gene Lyons?

A. Yes, I do.

Q. Who is Mr. Gene Lyons?

A. He is a columnist for the Arkansas Democrat Gazette.

Q. Are you familiar with his appearance on "Meet the Press" where he suggests in an article he wrote later that maybe the President is a victim similar to David Letterman in terms of somebody following him around, obsessed with him?

A. Is this one of the exhibits?

Q. Yes, sir.

A. I wonder if you could refer me to it.

Q. Sure. I can't read my writing.

BY MR. GRAHAM:

Q. Well, while we are looking for the exhibit, let me ask you this. Do you have any independent knowledge of him making such a statement?

A. Well, I'd like to see the exhibit so—
Q. Okay.
A. —so I could know exactly what he said.
Q. Okay.
MR. McDANIEL: If I might—Congressman, I don't know whether the one you're thinking of is—I note in Exhibit 20, there are—well, it's not a story by Mr. Lyons—
MR. GRAHAM: And that's it.
MR. McDANIEL: There are references to him in—in that story.
MR. GRAHAM: That's it. Thank you very much.
MR. McDANIEL: You're welcome.
MR. GRAHAM: I appreciate it.
THE WITNESS: This is 20?
BY MR. GRAHAM:
Q. Yes, sir.
A. Thank you.
Do you mind if I just read through it?
Q. Yes, sir. Take your time.
A. Thank you. [Witness perusing document.] I've read this.
Q. My question is that this article is a Boston Globe article, Saturday, February the 21st, and it references an appearance on "Meet the Press" by Mr. Gene Lyons. And I believe you know who Mr. Gene Lyons is; is that correct?
A. I do.
Q. Did you know who he was in January of 1998?
A. I did.
Q. And in this press appearance, it refers to it being the Sunday before the Saturday, February 21st, sometime in the middle of February.
He indicates on the show, at least this article recounts that he indicates, that the President could be in fact in "a totally innocent relationship in which the President was, in a sense, the victim of someone, rather like the woman who followed David Letterman around."
Do you know how Mr. Lyons would come to that conclusion? I know word travels fast, but how would he know that? Do you have any independent knowledge of how he would know that?
A. What exactly is the question?
Q. Well, the question is Mr. Lyons is indicating in the middle of February that the truth of the matter may very well be that the President is in an "innocent relationship in which the President was, in a sense, the victim of someone, rather like the woman who followed David Letterman around," and the question is that scenario of the President being a victim of someone obsessed seems rather like the conversation you had with the President on January the 21st. Do you know how Mr. Lyons would have had that take on things?
MR. McDANIEL: Well, I object to a question that sort of loads up premises, Senators. That question sort of, you know, says, well, this conversation is a lot like the one you had with the President, and then asks the question. And the danger to the witness is that he'll—by answering the question accepts the premise.
And I ask that if you want to ask him whether it's like the conversation with the President, that's a fair question, he'll answer it, but it ought to be broken out of there.
[Senators Specter and Edwards conferring.]
SENATOR SPECTER: Senator Edwards and I disagree on the ruling, so we're going to take Senator Edwards and ask you to rephrase the question since it—
[Laughter.]
MR. GRAHAM: Fair enough.
BY MR. GRAHAM:
Q. The characterization embodied here indicates this could be a totally innocent relationship in which the President was in a sense the victim of someone. Is it fair to say, Mr. Blumenthal, that is very much like the scenario the President painted to you when you talked with him on January the 21st?
A. It could be like that.
Q. Okay. And it goes on further: "rather like the woman who followed David Letterman around." Is that very much like the characterization the President indicated to you between him and Ms. Lewinsky?
A. Could be.
Q. Did you ever at any time talk with Mr. Gene Lyons about Ms. Lewinsky or any other person that was the subject of a relationship with the President?
A. I did talk to Gene Lyons about Monica Lewinsky.
Q. Could you tell us what you told him?

A. He asked me my views, and I told him, in no uncertain terms, that I wouldn't talk about her personally. I talked about Monica Lewinsky with all sorts of people, my mother, my friends, about what was in the news stories every day, just like everyone else, but when it came to talking about her personally, I drew a line.

Q. So, when you talk to your mother and your friends and Mr. Lyons about Ms. Lewinsky, are you telling us that you have these conversations, and you know what the President has told you and you're not tempted to tell somebody the President is a victim of this lady, out of his own mouth?

A. Not only am I not tempted, I did not.

Q. You don't know how all this information came out? You have no knowledge of it at all?

MR. McDANIEL: I don't understand the question about—

MR. GRAHAM: About her being a stalker, her being obsessed with the President, the President being like David Letterman in relationship to her.

BY MR. GRAHAM:

Q. You had no knowledge of how that all happened in the press?

A. I have an idea how it started in the press.

Q. Well, please share that with us.

A. I believe it started on January 21st with the publication of an article in Newsweek by Michael Isikoff that was posted on the World Wide Web and faxed around to everyone in the news media, in Washington, New York, everywhere, and in the White House. And in that article, Michael Isikoff reported the contents of what became known as the talking points.

And there was a mystery at the time about who wrote the talking points. We know subsequently that Monica Lewinsky wrote the talking points. And in that document, the author of the talking points advises Linda Tripp that she might refer to someone who was stalking the "P", meaning the President, and after that story appeared, I believe there were a flood of stories and discussions about this, starting on "Nightline" that very night and "Nightline" the next night and so on. And that's my understanding from observing the media of how this started.

Q. How long have you been involved in the media yourself?

A. Before I joined the White House staff, I was a journalist for 27 years.

Q. Is it your testimony that the Isikoff article on the 21st explains how White House sources contact reporters in late January and mid-February trying to explain that the President is a victim of a stalker, an obsessed young lady, who is the product of a broken home? Is that your testimony?

A. No.

MR. BREUER: I'm going to object to the form of the question. There is no evidence that White House officials, both in January and in February, if at any time, contacted sources, press sources.

MR. GRAHAM: I will introduce these articles. The articles are dated with White House sources, unsolicited, calling about this event, saying these things in January and February.

MR. BREUER: Well—

SENATOR SPECTER: Senator Edwards and I agree that the question may be asked and answered. Overruled.

THE WITNESS: If you could restate it, please?

BY MR. GRAHAM:

Q. Is it your testimony that the White House sources that are being referred to by the press are a result of the 21st of January Isikoff article? That's not what you're saying, is it?

A. No.

MR. McDANIEL: Well—

MR. GRAHAM: Thank you.

MR. McDANIEL: —I don't think that there ought to be argument with Mr. Blumenthal. I think he ought to be asked a question and given an opportunity to answer it, and that's an argumentative question and followed up by, "That's not what you're saying, is it?"

I also think the questions are remarkably imprecise, in that they do not specify what information it is this questioner is seeking to get Mr. Blumenthal to talk about, and in that regard, I think the questions are both irrelevant and unfair.

SENATOR EDWARDS: Are you objecting to a question that's already been asked and answered?

MR. McDANIEL: I might be, Senator, and I had that feeling when I heard Mr. Blumenthal say something, that I might be doing that.

MR. GRAHAM: That would be my reply. He understood what I asked, and he answered, and I'll accept his answer and we'll move on.

SENATOR SPECTER: Well, I think the objection is mooted at this point.

MR. GRAHAM: Okay.

SENATOR SPECTER: I do—I do think that to the extent you can be more precise, because these articles do contain—

MR. GRAHAM: Yes, sir.

SENATOR SPECTER: —a lot of information. We're still looking for that laser.

MR. GRAHAM: Yes, sir.

BY MR. GRAHAM:

Q. And these—and the reason this comes up, Mr. Isikoff—excuse me—Mr. Blumenthal, is you've referenced the Isikoff article on the 21st, and my question goes to White House sources indicating that Ms. Lewinsky is a stalker, the January 30th article, that she's obsessed with the President, that she wears tight skirts.

What I'm trying to say is that you—you are not saying—it is not your testimony—that those White House sources are picking up on the 21st article, are you?

A. I don't know about any White House sources on these stories.

Q. When you talked to Mr. Lyons, you never mentioned what time at all that Ms. Lewinsky was making demands on the President and he had to rebuff her?

A. Absolutely not.

Q. You never at one time told Mr. Lyons or anyone else that the President felt like that he was a victim much like the person in the novel, *Darkness at Noon*?

MR. McDANIEL: Well, I object to that question. This witness has testified that he told his wife and that he told White House counsel at a later date, and the question included anyone else. So I think it—

MR. GRAHAM: Yes. Strike that.

BY MR. GRAHAM:

Q. Excluding those two people?

A. Well, I believe I've asked—I've been asked, and answered that, and I haven't told anyone else.

Q. Was there—

A. I didn't tell anyone else.

Q. Was there ever an investigation at the White House about how these stories came out, supposedly?

A. No.

Q. Was anybody ever fired?

A. No.

MR. GRAHAM: Thank you, Mr. Blumenthal.

THE WITNESS: I thank you.

MR. ROGAN: No further questions.

MR. BREUER: Could we take a 5–minute break, Senator?

SENATOR SPECTER: We can. We will recess for 5 minutes.

THE VIDEOGRAPHER: We are going off the record at 11:24 a.m.

[Recess.]

THE VIDEOGRAPHER: We're going on the record at 11:40 a.m.

SENATOR SPECTER: Turn to White House counsel, Mr. Lanny Breuer.

MR. BREUER: Senators, the White House has no questions for Mr. Blumenthal.

SENATOR SPECTER: We had deferred one line of questions which had been subject objection and considerable conference, and we put it at the end of the transcript so it could be excised. Do you wish to—

MR. GRAHAM: Yes.

SENATOR SPECTER: —proceed further?

MR. BREUER: May we approach off the record, Senators?

SENATOR SPECTER: Off the record.

THE VIDEOGRAPHER: We're going off the record at 11:41 a.m.

[Discussion off the record.]

THE VIDEOGRAPHER: We are going back on the record at 12:10 p.m.

SENATOR SPECTER: The Senators have considered the matter, and in light of the references, albeit abbreviated, in the record and the generalization that answers—questions and answers would be permitted, reserving the final judgment to the full Senate, we will permit Congressman Graham to question on pattern and practice with respect to Ms. Willey.

MR. GRAHAM: Okay. Thank you.

FURTHER EXAMINATION BY HOUSE MANAGERS

BY MR. GRAHAM:

Q. Mr. Blumenthal, we're really close to the end here. If you could turn to Tab 5, page 193.

A. We have it.

Q. Okay, thank you.

And page 20, the last question, it's in the right-hand corner. I'll read the question, and we'll kind of follow the testimony. "Have you ever had a discussion with people in the White House or been present during any meeting where the allegation has come up that other women are fabricating an affair with the President?"

Now, could you read the answer for me, please?

A. Sure. My—my answer in the grand jury is this: "We've discussed news stories that arose out of the Jones case, which was dismissed by the judge as having no basis, in which there were allegations made against the President, and these were stories that were in the press."

Q. "And you"—"And did you discuss those with the President?"

You said, "No."

And the next question is: "So what form did you discuss those news stories in?"

And your answer was?

A. "In strategy meetings."

Q. Okay. "And that would include the daily meetings, the morning and the evening meetings?"

A. Yes.

Q. And your answer was "Yes."

Now, within that context, I want to walk through a bit how those strategy meetings came about and the purpose of the strategy meetings.

The next question goes as follows: "And there were names of the women that you discussed in that context that there had been news stories about and public allegations of an affair with the President?"

And your answer was?

A. "As I recall, we discussed Paula Jones, Kathleen Willey, we've discussed"—and the rest is redacted.

Q. Redacted—and that's fine, that's fine.

And the question later on, on line 24: "When you say that that was a complete and utter fraudulent allegation—", the answer is: "In my view, yes." Right?

A. Well—

Q. About a woman?

MR. McDANIEL: Senator, I must object to this, because I believe that question, clearly from the context, refers to redacted material—

MR. GRAHAM: Right.

MR. McDANIEL: —which has been preserved as secret by the grand jury, and I think it's somewhat misleading to talk about a fraudulent allegation that the grand jury heard that Mr. Blumenthal testified about, which is clearly not in the record before the Senate.

SENATOR SPECTER: Well, it is unclear on the face of the record. So, Congressman Graham, if you could—

MR. GRAHAM: The point I'm trying—

SENATOR SPECTER: —excuse me, let me just finish—

MR. GRAHAM: Yes.

SENATOR SPECTER: —if you could specify on what is on the record that you've put in up to now.

MR. GRAHAM: Okay. What I'm reading from, Senator, is—is a question and answer and a redacted name, and the point I'm trying to make is ever who that person was, the allegation was considered to be fraudulent based on your prior testimony.

THE WITNESS: That was—that was my testimony, that it was my view.

BY MR. GRAHAM:

Q. And that leads to this question. Was there ever a discussion in these strategy meetings where there was an admission that the allegation was believed to be true against the President in terms of relationship with other women?

MR. BREUER: I'm going to object to the form of the question in that it's referring to other women. Even based on the discussion that went off the record, I think that what Mr. Graham is doing now is certainly beyond any record in this case.

SENATOR SPECTER: Senator Edwards would like to hear the question repeated.

MR. GRAHAM: The strategy meetings—

SENATOR SPECTER: Good idea?

MR. GRAHAM: Yes, sir.

BY MR. GRAHAM:

Q. The strategy meetings involved press accounts of allegations between the President and other women. The question is very simple. At any of those meetings, was it ever conceded that the President did have in fact a relationship?

MR. BREUER: Object. I object to the question for the reasons I just previously stated.

SENATOR SPECTER: Senator Edwards raises the concern that I think he's correct on, that we have limited it to Willey, Ms. Willey. So, if you would—if you would focus—

MR. GRAHAM: Absolutely.

SENATOR SPECTER: —there—

MR. GRAHAM: Absolutely.

SENATOR SPECTER: —it would be within your proffer and what we have permitted.

MR. GRAHAM: Yes, sir. Very well.

BY MR. GRAHAM:

Q. In regards to Ms. Willey, is it fair to say that the consensus of the group was that these allegations were not true?

A. I don't know.

Q. Do you recall Ms. Willey giving a "60 Minutes" interview?

A. Yes.

Q. Do you recall any discussions after the interview at a strategy meeting about Ms. Willey?

MR. BREUER: I want the record to be clear that the White House has a continuing objection as to this line of inquiry.

SENATOR SPECTER: The record will so note.

THE WITNESS: If you could repeat the question, please.

MR. GRAHAM: Yes.

THE WITNESS: Sorry.

BY MR. GRAHAM:

Q. After the "60 Minutes" interview, was there ever a strategy meeting about what she said?

A. At one of the morning or evening meetings, we discussed the "60 Minutes" interview.

Q. And can you—I—I know it's hard because these meetings go on a lot. How—do you know who was there on that occasion, who would be the players that would be there?

A. They would be the same as before. I'd be happy to enumerate them for you, if you want me to.

Q. But the same as you previously testified to?

A. Yes.

Q. Okay, that's fine.

Do you recall what the discussions were about in terms of how to respond to the "60 Minutes" story?

A. Yes.

Q. Could you tell us?

A. They were what our official spokespeople would say.

Q. Did they include anything else?

A. Yes.

Q. Could you please tell us?

A. There was a considerable complaining about how, in the "60 Minutes" broadcast, Bob Bennett was not given adequate time to speak and present his case, and how he was, as I recall, poorly lighted.

Q. Was there any discussion about what Ms. Willey said herself and how that should be responded to?

A. I don't recall exactly. We just spoke about what our official spokespeople should respond to.

Q. Did anybody ever discuss the fact that Ms. Willey may have had a checkered past?

A. No, absolutely not. We never discussed the personal lives of any woman in those meetings.

Q. Did it ever come up as to, well, here's what we know about Kathleen Willey and the President, or let's go see what we can find out about Kathleen Willey and the President?

A. No.

Q. Who had the letters that Kathleen Willey wrote to the President?

A. I don't know exactly. The White House had them.

Q. Isn't it fair to say that somebody found those letters, kept those letters, and was ready to respond with those letters, if needed to be?

MR. BREUER: I'm going to object to the form of the question that it's outside the proffer of the Manager.

[Senators Specter and Edwards conferring.]

MR. McDANIEL: Yes. I object to the compound nature of the question, and—

SENATOR SPECTER: Could you rephrase the question, Congressman Lindsey—

MR. GRAHAM: Yes, sir.
SENATOR SPECTER: —or, Graham?
MR. GRAHAM: Yes, sir.
SENATOR SPECTER: I think that would solve your problem.
BY MR. GRAHAM:
Q. There were letters written to Ms. Willey to the President that were released to the media. Is that correct?
A. Yes.
Q. Do you know who gathered those letters up and how they were gathered up?
MR. BREUER: Objection.
SENATOR SPECTER: Senator Edwards and I agree that the Congressman may ask the question. Overruled.
THE WITNESS: No.
BY MR. GRAHAM:
Q. Would it be fair to say, using common sense, that somebody was planning to answer Ms. Willey by having those letters to offer to the press?
MR. BREUER: Objection.
MR. McDANIEL: It's argumentative.
MR. BREUER: It certainly is.
SENATOR SPECTER: Would you repeat that question?
BY MR. GRAHAM:
Q. The question is: Mr. Blumenthal, do you believe it's a fair assumption to make that somebody in the White House made a conscious effort to go seek out the letters between the President and Ms. Willey and use in response to her allegations?
[Senators Specter and Edwards conferring.]
THE WITNESS: Well, that's an opin—
MS. MARSH: Wait, wait, wait.
MR. McDANIEL: Please, Mr. Blumenthal.
THE WITNESS: Yes.
SENATOR SPECTER: Senator Edwards says, and I agree with him, that you ought to direct it to somebody with specific knowledge so you don't—
BY MR. GRAHAM:
Q. Do you have any knowledge—
SENATOR SPECTER: —deal totally with speculation.
BY MR. GRAHAM:
Q. Do you have any specific knowledge of that event occurring, somebody gathering the letters up, having them ready to be able to respond to Ms. Willey if she ever said anything?
A. No.
Q. You have no knowledge whatsoever of how those letters came into the possession of the White House to be released to the press?
A. No, I don't. I don't know—
MR. GRAHAM: Thank you. I—
THE WITNESS: —who had them—
MR. GRAHAM: —don't have any—
THE WITNESS: —in the White House.
MR. GRAHAM: —further questions.

PROGRAM

Mr. LOTT. Under the order just granted, the Senate will meet again as the Court of Impeachment on Saturday. On Saturday, the Senate will hear presentations from the House managers and the White House counsel for not to exceed 6 hours. After those presentations, the Senate will resume its business on Monday for 6 hours, beginning at 1 p.m.

ADJOURNMENT UNTIL 10 A.M. SATURDAY, FEBRUARY 6, 1999

Mr. LOTT. Mr. Chief Justice, I now ask unanimous consent the Senate stand in adjournment under the previous order, and ask that all Senators remain at their desks until the Chief Justice departs the Chamber.

There being no objection, at 4:31 p.m., the Senate, sitting as a Court of Impeachment, adjourned until Saturday, February 6, 1999, at 10 a.m.

SATURDAY, FEBRUARY 6, 1999

[From the Congressional Record]

The Senate met at 10:05 a.m. and was called to order by the Chief Justice of the United States.

TRIAL OF WILLIAM JEFFERSON CLINTON, PRESIDENT OF THE UNITED STATES

The CHIEF JUSTICE. The Senate will convene as a Court of Impeachment. The Chaplain will offer a prayer.

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following:

Mr. Chief Justice, it is with profound sadness that we express our grief over the loss of our legislative clerk, R. Scott Bates, who, along with his wife, Ricki Ellison Bates, last evening was struck by a car while walking across Lee Highway in Arlington. Mrs. Bates remains in serious condition and needs our prayers throughout this day.

Let us pray.

O eternal God, our heavenly Father, who loves us with an everlasting love and transforms the darkness of the Valley of the Shadow of Death into bright hope, the Senate family of Members and staff call on You for strength, comfort, and courage. Tragic death has taken from us a beloved friend, an admired fellow worker, a faithful Senate employee for over 30 years.

In the quietness we can hear his voice call the roll, read proposed legislation and, most of all, express his caring friendship to us all.

Thank You for Scott's commitment to excellence and his dedication to the work of the Senate regardless of long sessions or arduous debate. We intercede now for his wife, for her complete healing and recovery. Hold his wonderful children in Your loving arms: Lisa, Lori, and Paul. We remember with gratitude Lisa and Lori's outstanding service as pages in the Senate. Help them and their brother, Paul, to know that their dad, whom they loved so deeply, is with You. He trusted You in this life and now lives with You forever. Traumatic as was his physical death, it was but a transition in his eternal life.

Now, Lord, bless the Senate as it turns to the work of this day, cognizant of the shortness of time and the length of eternity for all of us. In the sure hope of the resurrection and eternal life. Amen.

The CHIEF JUSTICE. The Sergeant at Arms will make the proclamation.

The Sergeant at Arms, James W. Ziglar, made proclamation as follows:

Hear ye! Hear ye! Hear ye! All persons are commanded to keep silent, on pain of imprisonment, while the Senate of the United States is sitting for the trial of the

articles of impeachment exhibited by the House of Representatives against William Jefferson Clinton, President of the United States.

The CHIEF JUSTICE. The majority leader is recognized.

R. SCOTT BATES, LEGISLATIVE CLERK

Mr. LOTT. Mr. Chief Justice, our Senate family grieves today and our hearts are heavy as a result of the tragic loss of Scott Bates. Senators come and Senators go, but Scott has been a fixture in this great Chamber for 30 years and the last 8 years as our legislative clerk. His familiar voice was a pillar of our continuity and tradition. He was not just a coworker; he was a friend, really a great guy. Even as we conduct our business today, we will be grieving, but those who knew him well know that that is exactly what he would want us to do, to continue with the work of the Senate to which he devoted his life. He was an example of public service at its finest, never claiming the spotlight, never seeking a headline, but always working for the good of this institution and for the country we are here to serve.

We pray for the recovery of his wife, Ricki. We ask that the Lord keep her and their three children always in His care. Before I ask for a moment of silence by the Senate, I yield to Senator DASCHLE for his comments.

The CHIEF JUSTICE. The minority leader is recognized.

Mr. DASCHLE. I thank the majority leader. I thank our Chaplain for his gracious prayer.

The presence of Scott Bates in that chair and in our lives is something most of us have counted on each and every day. As the majority leader so eloquently said, he, Scott, served the Senate, our country, and each of us so admirably for the last 30 years. Who can forget that resonant voice? Who can forget the call of the roll? Who can forget the authority with which he articulated each of our names? The answer is—no one.

When Scott began his service, Senator Mansfield was the majority leader and Senator Hugh Scott the minority leader. Ever since that time, Scott was an integral part of the history created in this Chamber and certainly an integral part of our Senate family. He grew up with small town values, active in his church and Boy Scouts. He loved politics and school and served as a page in both the House and the Senate in the Arkansas Legislature. Scott's love of politics came naturally for him. His father actually served as a member of the Arkansas State Legislature. In 1970 he came here as a summer intern for Senator John McClellan, in the bill clerk's office, and began his work for us in 1973.

Today, we send our thoughts and our prayers to his wife, Ricki, who remains in the hospital, and to their three children, Lisa, Lori, and Paul, and his family in Arkansas, who are now dealing with this tragic loss.

Mr. LOTT. Mr. Chief Justice, I now ask that all Senators rise and let's observe a moment of silence for our friend, Scott Bates.

[Moment of silence, Senators rising.]

Thank you, Mr. Chief Justice.

TRIAL OF WILLIAM JEFFERSON CLINTON, PRESIDENT OF THE UNITED STATES

Mr. LOTT. Mr. Chief Justice, under the order for today there will be a 6-hour presentation equally divided between the House managers and the White House counsel. It is our intention to have a break around noon so we will have an opportunity for lunch, and also it may be necessary to have one break, a brief break, before that time.

Following today's presentation, the Senate will adjourn over until 1 p.m. on Monday.

THE JOURNAL

The CHIEF JUSTICE. If there is no objection, the Journal of the proceedings of the trial is approved to date.

ORDER OF PROCEDURE

The CHIEF JUSTICE. Pursuant to the order of February 1, 1999, the managers on the part of the House of Representatives and the counsel for the President each have 3 hours to make their presentation. The Chair recognizes Mr. Manager ROGAN to begin the presentation on the part of the House of Representatives.

Mr. Manager ROGAN. Mr. Chief Justice, distinguished counsel for the President, Members of the United States Senate, this is the first and only chance you will have in this historic impeachment trial to consider the evidence from a few of the actual witnesses. After weeks of proceedings, the day has finally arrived when the U.S. Senate will listen, not just to lawyers talk about the evidence, but to witnesses with direct knowledge of the unlawful conduct of the President of the United States.

Today in particular, you will have your only opportunity to hear from the one person whose testimony invariably leads to the conclusion that the President of the United States committed perjury and obstructed justice in a Federal civil rights action. That person is Monica Lewinsky, a bright lady whose life has forever been marked by the most powerful man on the Earth.

If her testimony is truthful, then the President committed the offenses alleged in the articles of impeachment. Many different opinions have been formed about her over the last year. Nearly all of this has been fueled by spin and by propaganda rather than by truth. Today, the analysis and the speculation ends. There is only one judgment the Senate must make for history about Monica Lewinsky: Do you believe her?

[Text of videotape presentation:]

SENATOR DEWINE. Do you, Monica S. Lewinsky, swear or affirm that the evidence you shall give in the case now pending between the United States and William Jefferson Clinton, President of the United States, shall be the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS. I do.

SENATOR DEWINE. The House managers may now begin your questioning.

Mr. Manager ROGAN. Who is this former intern who swore under oath to tell the truth, the whole truth, and nothing but the truth? Monica Lewinsky is an intelligent, articulate young woman who, until recently, held untarnished hope for tomorrow, like any

other recent college graduate. That hope was drastically altered when she was subpoenaed in a lawsuit against the President of the United States.

[Text of videotape presentation:]

But for the record, would you state your name once again, your full name?

A. Yes. Monica Samille Lewinsky.

Q. And you're a—are you a resident of California?

A. I'm—I'm not sure exactly where I'm a resident now, but I—that's where I'm living right now.

Q. Okay. You—did you grow up there in California?

A. Yes.

Q. I'm not going to go into all that, but I thought just a little bit of background here.

You went to college where?

A. Lewis and Clark, in Portland, Oregon.

Q. And you majored in—majored in?

A. Psychology.

Q. Tell me about your work history, briefly, from the time you left college until, let's say, you started as an intern at the White House.

A. Uh, I wasn't working from the time I—

Q. Okay. Did you—

A. I graduated college in May of '95.

Q. Did you work part time there in—in Oregon with a—with a District Attorney—

A. Uh—

Q. —in his office somewhere?

A. During—I had an internship or a practicum when I was in school. I had two practicums, and one was at the public defender's office and the other was at the Southeast Mental Health Network.

Q. And those were in Portland?

A. Yes.

Q. Okay. What—you received a bachelor of science in psychology?

A. Correct.

Q. Okay. As a part of your duties at the Southeast Health Network, what did you—what did you do in terms of working? Did you have direct contact with people there, patients?

A. Yes, I did. Um, they referred to them as clients there and I worked in what was called the Phoenix Club, which was a socialization area for the clients to—really to just hang out and, um, sort of work on their social skills. So I—

Q. Okay. After your work there, you obviously had occasion to come to work at the White House. How did—how did you come to decide you wanted to come to Washington, and in particular work at the White House?

A. There were a few different factors. My mom's side of the family had moved to Washington during my senior year of college and I wanted—I wasn't ready to go to graduate school yet. So I wanted to get out of Portland, and a friend of our family's had a grandson who had had an internship at the White House and had thought it might be something I'd enjoy doing.

Q. Had you ever worked around—in politics and campaigns or been very active?

A. No.

Q. You had to go through the normal application process of submitting a written application, references, and so forth to—to the White House?

A. Yes.

Q. Did you do that while you were still in Oregon, or were you already in D.C.?

A. No. The application process was while I was a senior in college in Oregon.

Q. Had you ever been to Washington before?

A. Yes.

Q. Obviously, you were accepted, and you started work when?

A. July 10th, 1995.

That image, the image of a young woman, very much like a family member or a friend that we might know, is an image that the President did not want America to see when his indiscretions with her became public. When that happened, the President painted Monica Lewinsky in a very different and callous light.

[Text of videotape presentation:]

WILLIAM JEFFERSON CLINTON: But I want to say one thing to the American people. I want you to listen to me. I'm going to say this again. I did not have sexual relations with that woman, Ms. Lewinsky. I never told anybody to lie, not a single time, never. These allegations are false, and I need to go back to work for the American people. Thank you.

"That woman" with that subtle description, the President invited a waiting America to adopt a totally false impression of Monica Lewinsky. That was not fair. Yet, with his close aides, aides that he later testified he knew would be witnesses before the grand jury, he went much further than a subtle sneer. Hear the words of Sidney Blumenthal, assistant to the President, recount how the President painted this vulnerable young intern who made the tragic mistake of becoming involved with him.

[Text of videotape presentation:]

Q. Did the President then give you his account of what happened between him and Monica Lewinsky?

A. As I recall, he did.

Q. What did the President tell you?

A. He, uh—he spoke, uh, fairly rapidly, as I recall, at that point and said that she had come on to him and made a demand for sex, that he had rebuffed her, turned her down, and that she, uh, threatened him. And, uh, he said that she said to him, uh, that she was called "the stalker" by her peers and that she hated the term, and that she would claim that they had had an affair whether they had or they hadn't, and that she would tell people.

Q. Do you remember him also saying that the reason Monica Lewinsky would tell people that is because then she wouldn't be known by her peers as "the stalker" anymore?

A. Yes, that's right.

Q. Do you remember the President also saying that—and I'm quoting—"I've gone down that road before. I've caused pain for a lot of people. I'm not going to do that again"?

A. Yes. He told me that.

Q. And that was in the same conversation that you had with the President?

A. Right, in—in that sequence.

Q. Can you describe for us the President's demeanor when he shared this information with you?

A. Yes. He was, uh, very upset. I thought he was, a man in anguish.

He was a man in anguish. This was more than rakish behavior. When the President used his aides as a conduit to impart false information to a Federal grand jury in a criminal investigation, his behavior graduated from the unconscionable to the illegal.

Members of the Senate, your task is to determine who is telling the truth and who is lying. As you weigh that option, consider Mr. Blumenthal's conclusion drawn on the very subject.

[Text of videotape presentation:]

Q. That's where you start talking about the story that the President told you. Knowing what you know now, do you believe the President lied to you about his relationship with Ms. Lewinsky?

A. I do.

To justify a vote of not guilty for the President, you certainly have the right to reject Monica Lewinsky's testimony as untruthful. However, I trust your sense of fairness will dictate that you will listen to all of her testimony before you dismiss it outright. If you believe her, you will see this morning how the President wove the web of perjury and obstruction of justice. You will see why he was impeached by the House of Representatives, and you will see why a just and proper verdict in this body would be to replace him as President with Vice President AL GORE.

Consider, for example, Ms. Lewinsky's testimony regarding witness tampering, one element of the obstruction of justice charge against the President. The President stands charged with illegally encouraging a witness in a Federal civil rights suit brought against him to give perjured testimony in that proceeding. Did he do this? Listen to Monica Lewinsky.

[Text of videotape presentation:]

We're at that point that we've got a telephone conversation in the morning with you and the President, and he has among other things mentioned to you that your name is on the Jones witness list. He has also mentioned to you that perhaps you could file an affidavit to avoid possible testifying in that case. Is that right?

A. Correct.

Q. And he has also, I think, now at the point that we were in our questioning, referenced the cover story that you and he had had, that perhaps you could say that you were coming to my office to deliver papers or to see Betty Currie; is that right?

A. Correct. It was from the entire relationship, that story.

Q. Now, when he alluded to that cover story, was that instantly familiar to you?

A. Yes.

Q. You knew what he was talking about?

A. Yes.

Q. And why was this familiar to you?

A. Because it was part of the pattern of the relationship.

It was part of the pattern of the relationship. During Ms. Lewinsky's testimony earlier this week under oath pursuant to a Senate deposition order, she further elaborated on this critical piece of evidence.

[Text of videotape presentation:]

Q. Did you discuss anything else that night in terms of—I would draw your attention to the cover stories. I have alluded to that earlier, but, uh, did you talk about cover story that night?

A. Yes, sir.

Q. And what was said?

A. Uh, I believe that, uh, the President said something—you can always say you were coming to see Betty or bringing me papers.

Q. I think you've testified that you're sure he said that that night. You are sure he said that that night?

A. Yes.

Consider also Ms. Lewinsky's testimony regarding concealing subpoenaed evidence; namely, the gifts he gave her. This is yet another element in the obstruction of justice allegation against the President. The President stands charged with corruptly engaging in a scheme to conceal evidence that had been subpoenaed in a Federal civil rights action brought against him. Did he do this? Remember, on the morning of December 28, 1997, a few days after Ms. Lewinsky received a subpoena directing her to turn over any gifts she had received from the President, the President met with Ms. Lewinsky. She suggested to him that she could give the gifts he gave her to Betty Currie, the President's personal secretary. The President said that he would think about it. Listen to what Monica Lewinsky said happened next.

[Text of videotape presentation:]

Did you later that day receive a call from Betty Currie?

A. Yes, I did.

Q. Tell us about that.

A. I received a call from—Betty, and to the best of my memory, she said something like I understand you have something for me or I know—I know I've testified to saying that—that I remember her saying either I know you have something for me or the President said you have something for me. And to me, it's a—she said—

I mean, this is not a direct quote, but the gist of the conversation was that she was going to go visit her mom in the hospital and she'd stop by and get whatever it was.

Q. Did you question Ms. Currie or ask her, what are you talking about or what do you mean?

A. No.

Q. Why didn't you?

A. Because I assumed that it meant the gifts.

As you can see, the only way Betty Currie would have known to come and get the gifts would have been for the President to tell her to do so.

Finally, consider Ms. Lewinsky's testimony regarding the President's help in securing a New York job for her to encourage her silence, which is another element of the obstruction of justice charge against him. The President is charged with chasing a job for her in order to prevent her truthful testimony. Did he do this? Remember that the President learned on December 6, 1997, that Ms. Lewinsky was on the Paula Jones witness list.

Listen to Monica Lewinsky.

[Text of videotape presentation:]

Q. Okay. Between your meeting with Mr. Jordan in early November, and December the 11th when you met with Mr. Jordan again, you did not feel that Mr. Jordan was doing much to help you get a job; is that correct?

A. I hadn't seen any progress.

Q. Okay. After you met with Mr. Jordan in early December, you began to interview in New York and were much more active in your job search; correct?

A. Yes.

Q. In early January, you received a job offer from Revlon with the help of Vernon Jordan; is that correct?

A. Yes.

Members of the Senate, these are but a few highlights of a broad tapestry of corruption that Mr. Manager HUTCHINSON and I will develop for you this morning through videotape testimony and through other evidence.

Before we proceed to that, it is worth briefly recounting the circumstances that elevated the President's initial indiscretions to the level of impeachable offenses. The lesson is not complex. It is quite elementary.

In all the things we do in life, life is about making choices. Parents teach children that bad choices bring sorrow and consequences. We do that because the failure to impose meaningful consequences for bad choices brings about more bad choices. That simple primer on life encapsulates the political and personal legacy of Bill Clinton, his continuing pattern of indulging all choices and accepting no consequences. This is demonstrated by the actions he took leading to his impeachment and trial before the Senate.

In May 1991, an incident allegedly occurred that led the President to make a bad choice. According to Paula Jones, a subordinate government employee, then-Governor Clinton made a crude and unwelcome sexual advance on her. She later filed a legal claim for sexual harassment against him.

In November 1995, the President made another bad choice. He began a physical relationship with a 22-year-old White House intern. He chose to begin a physical relationship with her. This was not, as he told the grand jury, a relationship that began as a friendship only to later blossom into intimacy. The President impulsively began using her for his gratification the very day he first

spoke with her. Later, he made the bad choice of continuing the relationship after Monica became a paid Government employee.

An important note. As regrettable as his choice was here, any accountability for the private aspect of this should not be determined by the Congress of the United States. It should be determined by his family. Had the President's bad choice simply ended with this indiscretion, we would not be here today. Adultery may be a lot of things, but it is not an impeachable offense.

Unfortunately, the President's bad choices only grew worse. In December 1997, the President made a bad choice. In order to avoid any possible legal accountability to Paula Jones, he chose to destroy her lawful right to proceed with her case. And this is how he did it: During the so-called discovery portion of the Paula Jones case, Federal Judge Susan Wright ordered the President to answer questions under oath about any intimate relationship he may have had with subordinate female government employees while he was Governor or President.

Why did Judge Susan Wright order him to answer these questions? She did it because sexual harassers in the workplace usually do not commit their offenses in the open. Typically they get their victims alone and isolated. Predators know if they can do this, one of two things generally will happen. Out of fear and intimidation the victim will submit, or out of fear and intimidation the victim will not submit but the victim will not tell anybody about it.

There usually is no other way for a sexual harassment victim to learn if there is evidence of a pattern of similar conduct by a predator without being able to ask these kinds of questions in a sexual harassment case. Without this information, a harassment victim in the workplace generally would not be able to prove her case. This is why courts routinely order defendants to answer these kinds of questions in almost every sexual harassment case in the country.

Now, President Clinton vigorously pursued legal arguments and motions to avoid answering these questions about his sexual relations with subordinate government employees. Yet, after hearing his arguments, Judge Susan Wright ordered the President to answer under oath these routine questions. And by the way, Paula Jones also was required to provide truthful answers under oath as part of the trial in the discovery process. Had Paula Jones lied in providing such answers, she would have been liable for criminal prosecution.

It was while the Paula Jones case was proceeding in the summer of 1995, that a 22-year-old named Monica Lewinsky went to work as an intern at the White House. Shortly thereafter, in November 1995, the President began his physical relationship with Monica Lewinsky. And this continued from 1995 until the early part of 1997.

In order to shield him, Monica Lewinsky promised the President that she would always deny the sexual nature of their relationship. She said she would always protect him. The President spoke words of approval and encouragement to this pledge of secrecy. Monica and the President even agreed to cover stories to disguise the true nature of their relationship.

In April 1996, Monica was transferred, against her will, from the White House job to a job at the Pentagon. After she left employ-

ment at the White House, she frequently returned there to continue her secret relationship with the President under the guise of visiting Betty Currie, the President's personal secretary.

After working at the Pentagon for over a year, Monica became disheartened. Despite the President's promises to the contrary, Monica was not returned to work at the White House. In July 1997, she began looking for a job in New York. She wasn't having any luck, despite the President's promise to help her with this, too. By early November 1997, Monica became frustrated with the lack of assistance.

Finally, Betty Currie arranged a meeting for Monica with Vernon Jordan, one of the President's closest friends. They sought to enlist his help in her New York job search. On November 5, 1997, Monica met for 20 minutes with Mr. Jordan in his office. No job referrals followed, no job interviews were arranged, and there were no contacts from Mr. Jordan. In short, Mr. Jordan made no effort to find Monica a job. Indeed, getting her a job was so unimportant to him that Mr. Jordan later testified that he didn't even remember meeting her on November 5.

Nothing happened on her job search through the month of November, because Mr. Jordan was either gone or he simply wasn't returning Monica's phone calls. All that changed on December 5, 1997. That was the day Monica Lewinsky's name appeared on the Paula Jones witness list.

Members of the Senate, this is how the whole thing started. A lone woman in Arkansas felt that she had been wronged by the President of the United States. The law said that she had a right to have her claim heard in a court of law. At each stage the President could have chosen to uphold the law. Instead, he chose to obstruct justice and to commit perjury.

In his presentation, Mr. Manager HUTCHINSON will show you, through videotape words of the key witnesses, how the President used his position to obstruct justice as set forth in the articles of impeachment. I will then return to make the same showing respecting the allegations of perjury in the articles. Throughout all of this, throughout this presentation, it is important to keep in mind that we seek no congressional punishment for a man who chose to cheat on his wife. However, we have a legal obligation to expect constitutional accountability for a President who chooses to cheat the law.

The CHIEF JUSTICE. The Chair recognizes Mr. Manager HUTCHINSON.

Mr. Manager HUTCHINSON. Thank you, Mr. Chief Justice.

Ladies and gentlemen of the Senate, I want to continue the presentation that was commenced this morning by Mr. ROGAN. Let me continue with the path of obstruction. The obstruction, for our purposes, began on December 5, 1997, when the witness list came out in the civil rights case. It was faxed to the President's lawyers. It was later given to the President.

At that point, the administration of justice became a threat to the President of the United States. He determined that the truth would be harmful to the case that he was trying to defend, and the President made a decision to take whatever steps were necessary to suppress the truth rather than to uphold the law. The acts of

obstruction included attempts to improperly influence the testimony of witnesses in the case against him, the procurement of a false affidavit in the case, the willful concealment of evidence that was under subpoena, and efforts to illegally influence the testimony of witnesses before the Federal grand jury.

You have heard these areas of obstruction presented to you before by managers on behalf of the House. Today it is important that you hear this case from those who have testified by deposition at your direction. And as you hear their testimony, you will see that the President may have been the only individual who had the complete picture. He had all the facts, and he did not always share those facts with others. He did not share those facts with Mr. Vernon Jordan, nor did he share all the facts with Ms. Monica Lewinsky, until he determined the time was right to do so.

For example, he knows that Ms. Lewinsky is a witness but does not tell Ms. Lewinsky that fact until the time is right and whenever the job search is proceeding. He asks Mr. Jordan to help Ms. Lewinsky to get a job, but he does not tell Mr. Jordan the essential facts, first of all, that Ms. Lewinsky is a witness and, secondly, that there is a dangerous relationship between them in which, if she testified, her testimony would be harmful.

The President was obviously concerned about the truth of the testimony of Ms. Lewinsky. It would have been harmful to his interests in the case. As a result, the President personally obstructed and directed the efforts of Mr. Jordan to secure Ms. Lewinsky a job and urge the filing of the affidavit. Now, what is the President's defense to this charge? Let's listen.

[Text of videotape presentation:]

Q. Was your assistance to Ms. Lewinsky which you have described in any way dependent upon her doing anything whatsoever in the Paula Jones case?

A. No.

Now, you have heard that before. As you can see, Mr. Jordan defends his actions and, by implication, defends the actions of the President. You can weigh his intentions, but his intentions are not the issue, because regardless of your view of Mr. Jordan and his motivations, they are irrelevant. His view as to whether there is a connection between the job and the testimony is not an issue. It is not an issue as to whether Ms. Lewinsky thought there was a connection between the job and the testimony. It is not an issue as to whether Revlon thought there was a connection between the job and the testimony.

There is only one issue, and that is whether the President viewed that there was a connection between those two. And it is the President who, under the law, had to have the corrupt intent, and that is the question that you have to answer. And I believe that the evidence will show that regardless of what anyone else believed, he knew the direct connection.

Now, after each of you hears the testimony of Ms. Lewinsky and Mr. Jordan, some of you will conclude that surely he had to know that there was an inappropriate relationship between the President and Ms. Lewinsky. And why do I say that? Well, Ms. Lewinsky will testify that he made it clear—that she made it clear to Mr. Jordan that there was that type of relationship. At first, she sort of is careful about it, but then she just ultimately tells him, as you will see

from her testimony. But Mr. Jordan also, for those who have listened to his testimony, refers to mother wit, and his oft relied upon mother wit would have told him as well, under the circumstances, that there is something more going on.

If he knew about the relationship, he had to know that all was not as it should be in what the President was asking him to do. The President requested a job for Ms. Lewinsky at the same time he was monitoring the filing of a false affidavit and knowing she was a witness in a case against him: All indicated that the job was not a favor for a young friend but it was a favor for someone in high office that had to be accomplished in order to assure the cooperation of a dangerous witness. That evidence will show that it is the President who suggested the assistance from Ms. Lewinsky and it is the President who suggested the false affidavit.

Now, let's listen to the testimony, step by step, through the job search, through the signing of the false affidavit, to the encouragement to file the false affidavit on December 17, to the discussion of the gifts on December 28, through the tampering with the testimony of Betty Currie on two occasions, and then with the President's aide when they were called before the Federal grand jury, or prior to that.

First, let's go to the job benefit to Ms. Lewinsky. How involved was the President in this activity? Let's first listen to the President as to what he said when he testified under oath in his deposition.

[Text of videotape presentation:]

Q. Do you know a man named Vernon Jordan?
A. I know him well.
Q. You have known him for a long time?
A. A long time.
Q. Has it ever been reported to you that he met with Monica Lewinsky and talked about this case?
A. I knew that he met with her. I think Betty suggested he met with her and she may have met with her. I thought that he talked with her about something else. I thought he had given her some advice about her move to New York. It seems like that is what Betty said.

Rather vague. Attributes all of his knowledge about Vernon Jordan, in reference to Ms. Lewinsky, to Betty, to Betty.

Let's go on and hear more of what the President has to say in this connection.

[Text of videotape presentation:]

Q. Have you ever had a conversation with Vernon Jordan in which Monica Lewinsky was mentioned?
A. I have. He told me that he thought he mentioned in passing to me that he had talked to her and she had come to him for advice about moving to New York.
Q. She had come to him for advice.
A. She had come to him for advice about moving to New York. She had called him and asked if she could come see him, and Betty, I think, maybe had said something to him about talking to him and he had given her some advice about moving to New York.
That's all I know about that.

That is all I know about that—diminished knowledge, diminished responsibility.

But let's see what his good friend and confidant, Mr. Jordan, says about what the President knew, when he knew it, and to what extent he controlled this effort.

[Text of videotape presentation:]

Q. Now, is it true that your efforts to find a job for Ms. Lewinsky that you referenced in that meeting with Mr. Gittis—were your efforts carried out at the request of the President of the United States?

A. There is no question but that through Betty Currie, I was acting on behalf of the President to get Ms. Lewinsky a job. I think that's clear from my grand jury testimony.

Q. Okay. And I just want to make sure that that's firmly established. And in reference to your previous grand jury testimony, you indicated, I believe, on May 28th, 1998, at page 61, that "She"—referring to Betty Currie—"was the one that called me at the behest of the President."

A. That is correct, and I think, Congressman, if in fact the President of the United States' secretary calls and asks for a request that you try to do the best you can to make it happen.

Q. And you received that request as a request coming from the President?

A. I—I interpreted it as a request from the President.

Q. And then, later on in June of '98 in the grand jury testimony at page 45, did you not reference or testify that "The President asked me to get Monica Lewinsky a job"?

A. There was no—there was no question but that he asked me to help and that he asked others to help. I think that is clear from everybody's grand jury testimony.

Q. And just one more point in that regard. In the same grand jury testimony, is it correct that you testified that "He"—referring to the President—"was the source of it coming to my attention in the first place"?

A. I may—if that is—if you—if it's in the—

Q. It's at page 58 of the grand jury—

A. I stand on my grand jury testimony.

As Mr. Jordan testified, the President was a source of it coming to his attention in the first place. Mr. Jordan, the President's friend, testified that this was not a casual matter for the President. He was interested, he was directing the show and, as will be clear, he was consumed with preventing the truth from coming out in the civil rights case.

But let's start back, for a moment, at the beginning. In the packet provided to you, there is a time line, and you can see again that there was the witness list that came out on December 5. That triggered the action in this case. But as we know, there was a meeting on November 5 between Ms. Lewinsky and Mr. Jordan in Mr. Jordan's office. Ms. Lewinsky wanted a job before the witness list came out, but not a whole lot was happening in that regard.

Let's look at the testimony of Mr. Jordan in regard to this November 5 meeting that he was first asked about, which he had no recollection about. When the records were reproduced for him, he had a recollection.

[Text of videotape presentation:]

Q. Well, regardless of whether you met with her in November or not, the fact is you did not do anything in November to secure a job for Ms. Lewinsky until your activities on December 11 of '97?

A. I think that's correct.

Q. And on December 11, I think you made some calls for Ms. Lewinsky on that particular day?

A. I believe I did.

There will be a pattern developing, as you can see. Mr. Jordan had no recollection of the November 5 meeting when he originally testified before the grand jury. He had no recollection whatsoever of that meeting. Basically, he said it didn't happen.

The second time he testified before the grand jury, the record was produced and it was substantiated. He recalls that. The second thing you can see from this was the meeting was of absolutely no consequence to him because this was not a priority issue to him.

He was not going to do anything. It started happening, of course, when the witness list came out. The President met with the attorneys with the witness list, and on December 7 the President and Mr. Jordan meet. On December 8, a meeting is set up by Ms. Lewinsky with Mr. Jordan for the 11th, and it was on the 11th when they met that things started moving and calls were being made. Of course, that was done at the direction of the President.

Look at Ms. Lewinsky's recollection of that same November 5 meeting.

[Text of videotape presentation:]

Q. . . . you did not feel that Mr. Jordan was doing much to help you get a job; is that correct?

A. I hadn't seen any progress.

Q. Okay. After you met with Mr. Jordan in early December, you began to interview in New York and were much more active in your job search; correct?

A. Yes.

Q. In early January, you received a job offer from Revlon with the help of Vernon Jordan; is that correct?

A. Yes.

Ms. Lewinsky, at this point, is at their mercy. She doesn't know what the communication is, she doesn't know what the President knows. The witness list has come in, and she hoped things were moving, but she doesn't know it. Finally, they start moving after the witness list comes in. On December 11, she has the meeting at which things start moving.

Was this a typical referral? Each of you in this body have had occasions where friends and acquaintances, at different levels, or previous employees come to you and say: I am going to be applying for a job with such and such a company. Will you be a reference for me?

Sometimes they ask you to make a call to that company to which they are applying for a job. This is not a typical referral, as you will see from the testimony. A few days prior to the December 11 meeting, Ms. Lewinsky sends up a wish list of the companies she wanted to apply. Mr. Jordan quickly said, "I'm not concerned about your wish list. I have the people I want to deal with." He took control of the job search.

Let's listen to the testimony of Mr. Jordan as he emphasizes that point.

[Text of videotape presentation:]

Q. Now, you mentioned that she had sent you a—I guess some people refer to it—a wish list, or a list of jobs that she—

A. Not jobs—companies.

Q. —companies that she would be interested in seeking employment with.

A. That's correct.

Q. And you looked at that, and you determined that you wanted to go with your own list of friends and companies that you had better contacts with.

A. I'm sure, Congressman, that you too have been in this business, and you do know that you can only call people that you know or feel comfortable in calling.

Q. Absolutely. No question about it. And let me just comment and ask your response to this, but many times I will be listed as a reference, and they can take that to any company. You might be listed as a reference and the name "Vernon Jordan" would be a good reference anywhere, would it not?

A. I would hope so.

Q. And so, even though it was a company that you might not have the best contact with, you could have been helpful in that regard?

A. Well, the fact is I was running the job search, not Ms. Lewinsky, and therefore, the companies that she brought or listed were not of interest to me. I knew where I would need to call.

Q. And that is exactly the point, that you looked at getting Ms. Lewinsky a job as an assignment rather than just something that you were going to be a reference for.

A. I don't know whether I looked upon it as an assignment. Getting jobs for people is not unusual for me, so I don't view it as an assignment. I just view it as something that is part of what I do.

Q. You're acting in behalf of the President when you are trying to get Ms. Lewinsky a job, and you were in control of the job search?

A. Yes.

The testimony is very clear as to Mr. Jordan running the job search—in essence, a job placement on behalf of the President.

Let's go again to that meeting of December 11 at which Ms. Lewinsky goes, for the first time Mr. Jordan remembers, for that meeting about the jobs. Ms. Lewinsky's view of this meeting—again, Jordan's list—he was the one controlling the job search. Also, you will see that Mr. Jordan acquires some knowledge from Ms. Lewinsky as to the relationship.

[Text of videotape presentation:]

Q. Let's go forward another week or so to December the 11th and a lunch that you had with Vernon Jordan, I believe, in his office.

A. Yes.

Q. How did—how was that meeting set up.

A. Through his secretary.

Q. Did you instigate that, or did he call through his secretary?

A. I don't remember.

Q. What was the purpose of that meeting?

A. Uh, it was to discuss my job situation.

Q. And what, what—how was that discussed?

A. Uh, Mr. Jordan gave me a list of three names and suggested that I contact these people in a letter that I should cc him on, and that's what I did.

Q. Did he ask you to copy him on the letters that you sent out?

A. Yes.

Q. During this meeting, did he make any comments about your status as a friend of the President?

A. Yes.

Q. What—what did he say?

A. In one of his remarks, he said something about me being a friend of the President.

Q. And did you respond?

A. Yes.

Q. How?

A. I said that I didn't, uh—I think I—my grand jury testimony, I know I talked about this, so it's probably more accurate. My memory right now is I said something about, uh, seeing him more as, uh, a man than as a President, and I treated him accordingly.

Q. Did you express your frustration to Mr. Jordan with, uh, with the President?

A. I expressed that sometimes I had frustrations with him, yes.

Q. And what was his response to you about, uh—after you talked about the President?

A. Uh, he sort of jokingly said to me, You know what your problem is, and don't deny it—you're in love with him. But it was a sort of light-hearted nature.

Q. Did you—did you have a response to that?

A. I probably blushed or giggled or something.

That was on December 11. And I am sure Mr. Jordan and others were starting to kick in, at this point, understanding that there was something a little bit more involved in the relationship between Ms. Lewinsky and the President.

But let's go to another aspect of the relationship on the job search. Let's look how information is controlled. Mr. Jordan learns

ultimately on December 19 clearly that Ms. Lewinsky is on the witness list because she presents a subpoena to him. But whenever he pursues the jobs later on and maybe the call to Mr. Perelman, he does not pass that information along to the company. Does that make a difference to Revlon? You will hear some reference to Mr. Halperin, who is one of the executives at MacAndrews & Forbes, the parent company of Revlon, and Mr. Perelman, who is the CEO of MacAndrews and Forbes as well.

Let's listen to the testimony of Mr. Jordan on how information is controlled.

[Text of videotape presentation:]

Q. Now, the second piece of information was the fact that you knew and the President knew that Ms. Lewinsky was under subpoena in the Jones case, and that information was not provided to either Mr. Halperin or to Mr. Perelman; is that correct?

A. That's correct.

Q. Now, I wanted to read you a question and answer of Mr. Howard Gittis in his grand jury testimony of April 23, 1998.

The question was: "Now, you had mentioned before that one of the responsibilities of director is to have a fiduciary duty to the company. If it was the case that Ms. Lewinsky had been noticed as a witness in the Paula Jones case, and Vernon Jordan had known that, is that something that you believe as a person who works for MacAndrews & Forbes, is that something that you believe that Mr. Jordan should have told you, or someone in the company, not necessarily you, but someone in the company, when you referred her for employment?"

His answer was "Yes."

Do you disagree with Mr. Gittis' conclusion that that was important information for MacAndrews & Forbes?

A. I obviously didn't think it was important at the time, and I didn't do it.

Why would Revlon want to know that Ms. Lewinsky was on a witness list and under subpoena in a case that was adverse to the President and the fact the President was really the one that was wanting the job placement for Ms. Lewinsky? I think everyone understands the extraordinary conflict, extraordinary impropriety of that circumstance. As Mr. Jordan himself testified previously, that whenever the subpoena was issued, it changed the circumstances, and, yet, that information was not provided to Revlon, and Mr. Gittis certainly would have thought that it should have been.

So Revlon wanted to know for the same reason, really, that Mr. Jordan would have liked to have had that information. But when the President learned that Ms. Lewinsky was on the witness list, he did not share that information with Mr. Jordan himself.

So it is explosive information that the President did not make available to him until the right time.

Let's listen to Mr. Jordan.

[Text of videotape presentation:]

Q. All right. And so there's two conversations after the witness list came out—one that you had with the President on December 7th, and then a subsequent conversation with him after you met with Ms. Lewinsky on the 11th.

Now, in your subsequent conversation after the 11th, did you discuss with the President of the United States Monica Lewinsky, and if so, can you tell us what that discussion was?

A. If there was a discussion subsequent to Monica Lewinsky's visit to me on December the 11th with the President of the United States, it was about the job search.

Q. All right. And during that, did he indicate that he knew about the fact that she had lost her job in the White House, and she wanted to get a job in New York?

A. He was aware that—he was obviously aware that she had lost her job in the White House, because she was working at the Pentagon. He was also aware that

she wanted to work in New York, in the private sector, and understood that that is why she was having conversations with me. There is no doubt about that.

Q. And he thanked you for helping her?

A. There's no question about that, either.

Q. And on either of these conversations that I've referenced that you had with the President after the witness list came out, your conversation on December 7th, and your conversation sometime after the 11th, did the President tell you that Ms. Monica Lewinsky was on the witness list in the Jones case?

A. He did not.

The President knew it was not disclosed to Mr. Jordan, according to his testimony. Mr. Jordan has to be reminded as to how important this information was because he previously testified that he expected to be told. It was significant enough information that if Ms. Betty Currie knew that Ms. Lewinsky was under subpoena that Betty Currie should tell him. He expected the President to tell him. That was his expectation, for natural reasons—that this is an extraordinary conflict whenever the President knows there is a relationship. She is an adverse witness. She is under subpoena, and provided a job benefit. But he kept some of those details to himself without disclosing.

Let's listen again to Mr. Jordan.

[Text of videotape presentation:]

Q. Precisely. She disclosed to you, of course, when she received the subpoena, and that's information that you expected to know and to be disclosed to you?

A. Fine.

Q. Is—

A. Yes. Fine.

Q. And in fact, if Ms. Currie—I'm talking about Betty Currie—if she had known that Ms. Lewinsky was under subpoena, you would have expected her to tell you that information as well since you were seeking employment for Ms. Lewinsky?

A. Well, it would have been fine had she told me. I do make a distinction between being a witness on the one hand and being a defendant in some sort of criminal action on the other. She was a witness in the civil case, and I don't believe witnesses in civil cases don't have a right for—to employment.

Q. Okay. I refer you to page 95 of your grand jury testimony, in which you said: "I believe that had Ms. Currie known, that she would have told me."

And the next question: "Let me ask the question again, though. Would you have expected her to tell you if she knew?"

And do you recall your answer?

A. I don't.

Q. "Yes, sure."

A. I stand by that answer.

Q. And so it's your testimony that if Ms. Currie had known that Ms. Lewinsky was under subpoena, you would have expected her to tell you that information?

A. It would have been helpful.

Q. And likewise, would you have expected the President to tell you if he had any reason to believe that Ms. Lewinsky would be called as a witness in the Paula Jones case?

A. That would have been helpful, too.

Q. And that was your expectation, that he would have done that in your conversations?

A. It—it would certainly have been helpful, but it would not have changed my mind.

Q. Well, being helpful and that being your expectation is a little bit different, and so I want to go back again to your testimony on March 3, page 95, when the question is asked to you—question: "If the President had any reason to believe that Ms. Lewinsky could be called a witness in the Paula Jones case, would you have expected him to tell you that when you spoke with him between the 11th and the 19th about her?"

And your answer: "And I think he would have."

A. My answer was yes in the grand jury testimony, and my answer is yes today.

Q. All right. So it would have been helpful, and it was something you would have expected?

A. Yes.

Q. And yet, according to your testimony, the President did not so advise you of that fact in the conversations that he had with you on December 7th and December 11th after he learned that Ms. Lewinsky was on the witness list?

A. As I testified—

MR. KENDALL: Objection. Misstates the record with regard to December 11th.

MR. HUTCHINSON: I—I will restate the question. I believe it accurately reflects the record, and I'll ask the question.

BY MR. HUTCHINSON:

Q. And yet, according to your testimony, the President did not so advise you of the fact that Ms. Lewinsky was on the witness list despite the fact that he had conversations with you on two occasions, on December 7th and December 11th?

A. I have no recollection of the President telling me about the witness list.

Now, I am providing some long snippets because I want you to see the testimony of the witnesses. I think it is very important as you piece it together. You might say, well, there is nothing explosive here. Whenever you are talking about obstruction of justice, it ties together, it fits together. Information is controlled and that is what we see in this particular case.

Clearly, Mr. Jordan expected information because he knew that something that the President should have shared, it was not shared, according to Mr. Jordan's testimony. And for natural reasons.

If you look at the exhibit that I passed out, on the time line we have talked about when the witness list came out, on the 7th, and on the 11th, or sometime thereafter, the President and Mr. Jordan meet, and that information is not disclosed, despite the fact that the President knows she is on the witness list.

And now, let's go to the 17th, because now the President is ready to share some additional information with Ms. Lewinsky. Now that he has got the job search moving, perhaps she is in a more receptive mood so that she can handle the news that she is on the witness list. So let's listen to Ms. Lewinsky's testimony as to this December 17, 2 a.m., telephone conversation from the President of the United States.

[Text of videotape presentation:]

Q. Sometime back in December of 1997, in the morning of December the 17th, did you receive a call from the President?

A. Yes.

Q. What was the purpose of that call? What did you talk about?

A. It was threefold—first, to tell me that Ms. Currie's brother had been killed in a car accident; second, to tell me that my name was on a witness list for the Paula Jones case; and thirdly, he mentioned the Christmas present he had for me.

Q. This telephone call was somewhere in the early morning hours of 2 o'clock to 2:30.

A. Correct.

Q. Did it surprise you that he called you so late?

A. No.

Q. Was this your first notice of your name being on the Paula Jones witness list?

A. Yes.

Q. I will try to ask sharper questions to avoid these objections. At that point we got a telephone conversation in the morning with you and the President. And he has, among other things, mentioned to you that your name is on the Jones witness list. He has also mentioned to you that perhaps you could file an affidavit to avoid possible testifying in that case. Is that right.

A. Correct.

Q. And he's also, I think, now at the point that we were in our questioning in reference to the cover story that you and he had, that perhaps you could say that you were coming to my office to deliver papers or to see Betty Currie. Is that right.

A. Correct. It was from the entire relationship. That's correct.

Q. Now, when he alluded to that cover story, was that instantly familiar to you.

A. Yes.

Q. You knew what he was talking about.
A. Yes.
Q. And why was this familiar to you.
A. Because it was part of the pattern of the relationship.

* * * * *

Q. As I understand your testimony, too, the cover stories were reiterated to you by the President that night on the telephone—
A. Correct.
Q. —and after he told you you would be a witness—or your name was on the witness list, I should say?
A. Correct.
Q. And did you understand that since your name was on the witness list that there would be a possibility that you could be subpoenaed to testify in the Paula Jones case?
A. I think I understood that I could be subpoenaed, and there was a possibility of testifying. I don't know if I necessarily thought it was a subpoena to testify, but—
Q. Were you in fact subpoenaed to testify?
A. Yes.
Q. And that was what—

* * * * *

Q. Okay. Let me ask it. Did you understand in the context of the telephone conversation with the President that early morning of December the 17th—did you understand that you would deny your relationship with the President to the Jones lawyers through use of these cover stories?
A. From what I learned in that—oh, through those cover stories, I don't know, but from what I learned in that conversation, I thought to myself I knew I would deny the relationship.
Q. And you would deny the relationship to the Jones lawyers?
A. Yes, correct.
Q. Good.

Do you believe Monica Lewinsky? I believe her testimony is credible. She is not trying to hammer the President. She is trying to tell the truth as to her recollection of this 2 a.m. call to her by the President of the United States on December 17.

The news is broken to her that she is on the witness list. It puts it in a legal context. This is a 24-year-old ex-intern. She might not have the legal sophistication of the President, but the President certainly knows the legal consequences as to his actions. What he is telling a witness in a case that is adverse to him is that: You do not have to tell the truth. You can use the cover stories that we used before. And that might have been in a nonlegal context, but now we are in a different arena and he says: Continue the same lies, even though you are in a court of law. Continue the same pattern.

Ladies and gentlemen of the Senate, in my book that is illegal, and I hate to say it, but that is obstruction of justice by the President of the United States. And, if you believe Ms. Lewinsky, then you have to accept that fact. Otherwise, we are saying that it is all right for someone to take a witness who is against them and say: Don't tell the truth, don't worry about that, use the cover stories. You can file an affidavit. You can avoid telling the truth.

Ladies and gentlemen, this is significant. It is important. Do not diminish this, the impact of what happened on December 17, with the obstruction of justice on that occasion.

And, now, let's move on. That is December 17. We can move on to December 19, and this is when the subpoena is actually delivered to Ms. Lewinsky. She calls Vernon Jordan. She is in tears. She is upset. Vernon Jordan says, "Come over to my office," and they have the discussion. And you are going to hear Mr. Jordan's

version of what happens on December 19. You are going to hear Ms. Lewinsky's testimony as to what happens in that office on December 19 as well.

Let's hear from Mr. Jordan.

[Text of videotape presentation:]

Q. And during this meeting, did she in fact show you the subpoena that she had received in the Jones litigation?

A. I'm sure she showed me the subpoena.

Q. And the subpoena that was presented to you asked her to give a deposition, is that correct?

A. As I recollect.

Q. But did it also ask Ms. Lewinsky or direct her to produce certain documents and tangible objects?

A. I think, if I'm correct in my recollection, it asked that she produce gifts.

Q. Gifts, and some of those gifts were specifically enumerated.

A. I don't remember that. I do remember gifts.

Q. And did you discuss any of the items requested under the subpoena?

A. I did not. What I said to her was that she needed counsel.

Q. Now, just to help you in reference to your previous grand jury testimony of March 3, '98—and if you would like to refer to that, page 121, but I believe it was your testimony that you asked her if there had been any gifts after you looked at the subpoena.

A. I may have done that, and if I—if that's in my testimony, I stand by it.

Q. And did she—from your conversation with her, did you determine that in your opinion, there was a fascination on her part with the President?

A. No question about that.

Q. And I think you previously described it that she had a "thing" for the President?

A. "Thing," yes.

Q. And did you make any specific inquiry as to the nature of the relationship that she had with the President?

A. Yes. At some point during that conversation, I asked her directly if she had had sexual relationships with the President.

Q. And is this not an extraordinary question to ask a 24-year-old intern, whether she had sexual relations with the President of the United States?

A. Not if you see—not if you had witnessed her emotional state and this "thing," as I say. It was not.

Q. And her emotional state and what she expressed to you about her feelings for the President is what prompted you to ask that question?

A. That, plus the question of whether or not the President at the end of his term would leave the First Lady; and that was alarming and stunning to me.

Q. And she related that question to you in that meeting on December 19th?

A. That's correct.

Q. Now, going back to the question in which you asked her if she had had a sexual relationship with the President, what was her response?

A. No.

Q. And I'm sure that that was not an idle question on your part, and I presume that you needed to know the answer for some purpose.

A. I wanted to know the answer based on what I had seen in her expression; obviously, based on the fact that this was a subpoena about her relationship with the President.

Q. And so you felt like you needed to know the answer to that question to determine how you were going to handle the situation?

A. No. I thought it was a factual data that I needed to know, and I asked the question.

Q. And why did you need to know the answer to that question?

A. I am referring this lady, Ms. Lewinsky, to various companies for jobs, and it seemed to me that it was important for me to know in that process whether or not there had been something going on with the President based on what I saw and based on what I heard.

Why was it important? Why was it important for Mr. Jordan to know whether she was under subpoena? Why was it important for Mr. Jordan to know whether there was a sexual relationship? Why was it important? Because those would be incredible, explosive in-

gredients in a circumstance that is fraught with danger and impropriety, and he knows that and he asked the right questions. But he doesn't listen to the right answer, nor does he take the right steps, because he is acting at the direction of the President.

As you will see, during his meeting on December 19, he was keeping the President very closely informed. You will see in your packet of materials that the call—as soon as he was notified, Mr. Jordan was notified Ms. Lewinsky was under subpoena, he tried to get ahold of the President, exhibit H–25, a 3:51 call to the President. He didn't make contact at that point. Ms. Lewinsky came into his office about 4:47. It was at 5:01 that he received a call from the President. So the President actually called him at the same time Ms. Lewinsky was in the office.

Let's look at Ms. Lewinsky's testimony as to her recollection of that December 19 meeting with Mr. Jordan.

[Text of videotape presentation:]

Q. You went to see Mr. Jordan, and you were inside his office after 5 o'clock, and you did—is that correct?
A. Yes.
Q. Were—were you interrupted, in the office?
A. Yes. He received a phone call.
Q. And you testified that you didn't know who that was that called?
A. Correct.
Q. Did you excuse yourself?
A. Yes.
Q. What—after you came back in, what—what occurred? Did he tell you who he had been talking to?
A. No.
Q. Okay. What happened next?
A. I know I've testified about this—
Q. Yes.
A. —so I stand by that testimony, and my recollection right now is when I came back in the room, I think shortly after he had placed a phone call to—to Mr. Carter's office, and told me to come to his office at 10:30 Monday morning.
Q. Did you know who Mr. Carter was?
A. No.
Q. Did Mr. Jordan tell you who he was?
A. No—I don't remember.
Q. Did you understand he was going to be your attorney?
A. Yes.
Q. Did you express any concerns about the—the subpoena?
A. I think that happened before the phone call came.
Q. Okay, but did you express concerns about the subpoena?
A. Yes, yes.
Q. And what were those concerns?
A. In general, I think I was just concerned about being dragged into this, and I was concerned because the subpoena had called for a hatpin, that I turn over a hatpin, and that was an alarm to me.
Q. How—in what sense was it—in what sense was it an alarm to you?
A. The hatpin being on the subpoena was evidence to me that someone had given that information to the Paula Jones people.
Q. What did Mr. Jordan say about the subpoena?
A. That it was standard.
Q. Did he have any—did he have any comment about the specificity of the hatpin?
A. No.
Q. And did you—
A. He just kept telling me to calm down.
Q. Did you raise that concern with Mr. Jordan?
A. I don't remember if—if I've testified to it, then yes. If—I don't remember right now.
Q. Did—would you have remembered then if he made any comment or answer about the hatpin?
A. I mean, I think I would.

Q. And you don't remember?
A. I—I remember him saying something that it was—you know, calm down, it's a standard subpoena or vanilla subpoena, something like that.

What we see here is another example of compartmentalization of information. During this meeting with Ms. Lewinsky, Mr. Jordan receives a call from the President, presumably in response to a call he had placed to the President, to tell him Ms. Lewinsky had been subpoenaed. When the President calls, Mr. Jordan takes that call in private. It is about Ms. Lewinsky, it is about the subpoena, and that information is not shared with Ms. Lewinsky. It is of interest to her.

Let's go on and hear some more about Ms. Lewinsky's version of that conversation on December 19.

[Text of videotape presentation:]

Q. Did Mr. Jordan during that meeting make an inquiry about the nature of the relationship between you and the President?
A. Yes, he did.
Q. What was that inquiry?
A. I don't remember the exact wording of the questions, but there were two questions, and I think they were something like did you have sex with the President or did he—and if—or did he ask for it or some—something like that.

At this point, Ms. Lewinsky denies the relationship. She thinks this is some type of a test. She is not sure the reason for the question. She thinks he knows there is a little confusion on that. Clearly, Mr. Jordan is not satisfied with the answer. Mother wit is still around, as he indicated. But he feels so concerned about it that that night he goes to see the President, that we will later see, and asks that same question of the President.

Now, let's talk to President Clinton and see what he testifies about when this information was reported to him on the subpoena. Let's listen to the testimony of President Clinton.

[Text of videotape presentation:]

Q. Did anyone other than your attorneys ever tell you that Monica Lewinsky had been served with subpoena in this case?
A. I don't think so.
Q. Did you ever talk with Monica Lewinsky about the possibility that she might be asked to testify in this case?
A. Bruce Lindsey, I think Bruce Lindsey told me that she was, I think maybe that's the first person told me she was. I want to be as accurate as I can.

Mr. KERREY addressed the Chair.

The CHIEF JUSTICE. The Chair recognizes the Senator from Nebraska.

Mr. KERREY. Can I ask the manager to identify which deposition this is?

Mr. Manager HUTCHINSON. This is the January deposition.

Mr. KERREY. Mr. Chief Justice, will the manager answer the question and then show that again? This is the second time he has shown a tape of the President without indicating which deposition it was.

The CHIEF JUSTICE. Yes, I think it would be a good idea for the manager if he will indicate what deposition it was, if you are showing a deposition video of the President.

Mr. Manager HUTCHINSON. Thank you, Mr. Chief Justice, and I thank the Senator for the question. It is a very fair question, and I will try to be more clear in the identification of that. This is the

testimony of William Jefferson Clinton before the deposition in the Jones case in January, January 17. I believe—can we replay that? We are not going to replay that. Let me go on.

The testimony that he gave at that time was, "Did anyone other than your attorneys ever tell you that Monica Lewinsky had been served with a subpoena in that case," and the answer was, "I don't think so." Clearly, Mr. Jordan was keeping close contact with the President, telling him every step of the way, when the subpoena, the call, he is placing a call back—the information is there, but, of course, the President tries to diminish that.

Let's go on with some more testimony of Ms. Lewinsky.

[Text of videotape presentation:]

Q. Did you ask Mr. Jordan to call the President and advise him of the subpoena?

A. I think so, yes. I asked him to inform the President. I don't know if it was through telephone or not.

Q. And you did that because the President had asked you to make sure you let Betty know that?

A. Well, sure. With Betty not being in the office, I couldn't—there wasn't anyone else that I could call to get through to him.

Q. Did Mr. Jordan say to you when he might see the President next?

A. I believe he said he would see him that evening at a holiday reception.

Mr. LOTT. Mr. Chief Justice, could I inquire, was the manager thinking in terms of concluding this portion in 15 minutes, or do you want to take a break now?

Mr. Manager HUTCHINSON. This would be a good time for a break.

RECESS

Mr. LOTT. Mr. Chief Justice, I ask unanimous consent that we take a 15-minute break at this time.

There being no objection, at 11:30 a.m., the Senate recessed until 11:53 a.m.; whereupon, the Senate reassembled when called to order by the Chief Justice.

The CHIEF JUSTICE. The Chair recognizes Mr. Manager HUTCHINSON.

Mr. Manager HUTCHINSON. Thank you, Mr. Chief Justice. I was going to take the opportunity to replay the videotape—in fact, I will now—that I did not properly explain before. This is the videotape of President Clinton and his testimony before the civil deposition in the Jones case in January of 1997.

The CHIEF JUSTICE. When you say "before," you actually mean "during," don't you? It is not before the deposition; his testimony was during the deposition.

Mr. Manager HUTCHINSON. Mr. Chief Justice, you are absolutely correct. Excuse me. Thank you.

[Text of videotape presentation:]

Q. Did anyone other than your attorneys ever tell you that Monica Lewinsky had been served with subpoena in this case?

A. I don't think so.

Q. Did you ever talk with Monica Lewinsky about the possibility that she might be asked to testify in this case?

A. Bruce Lindsey, I think Bruce Lindsey told me that she was, I think maybe that's the first person told me she was. I want to be as accurate as I can.

And now let's go to what Mr. Jordan has to say in reference to his contacts with the President when he learned of the subpoena on December 19. Let's play that tape.

[Text of videotape presentation:]

Q. Now, Mr. Jordan, you indicated you had this conversation with the President at about 5:01 p.m. out of the presence of Ms. Lewinsky. Now, during this conversation with the President, what did you tell the President in that conversation?

A. That Lewinsky—I'm sure I told him that Ms. Lewinsky was in my office, in the reception area, that she had a subpoena and that I was going to visit with her.

Q. And did you advise the President as well that you were going to recommend Frank Carter as an attorney?

A. I may have.

Q. And why was it necessary to tell the President these facts?

A. I don't know why it was not unnecessary to tell him these facts. I was keeping him informed about what was going on, and so I told him.

Q. Why did you make the judgment that you should call the President and advise him of these facts?

A. I just thought he ought to know. He was interested it—he was obviously interested in it—and I felt some responsibility to tell him, and I did.

Q. All right. And what was the President's response?

A. He said thank you.

Q. Subsequent to your conversation with the President about Monica Lewinsky, did you advise Ms. Lewinsky of this conversation with the President?

A. I doubt it.

Once again, Mr. Jordan testifies that the President was obviously interested in it. This was not a matter of casual interest to him. It was a matter of deep concern that jeopardized what he saw as his position in that lawsuit.

Now, let's go back again to the testimony of President Clinton, this time before the grand jury in August of 1998.

[Playing of videotape.]

Mr. STEVENS. We cannot hear that monitor.

Mr. Manager HUTCHINSON. I will read the answer again:

. . . and Mr. Jordan informed you of that, is that right?

Answer: No, sir.

Now, in fairness to the President, he gives a longer answer than that. I welcome anybody to read it, but it appears rather convoluted. I think that you can see the contrast. There is no question in Mr. Jordan's mind as to the details that he is providing to the President on a regular basis. We are on December 19. The subpoena is issued. He notifies the President. He notifies the President how the job search is going. He notifies the President that they got representation through Mr. Carter. So the details are provided to the President and to contrast that with the President's recollection as to did he have any contact with Mr. Jordan, once again diminishing that.

Let's go back to December 19, back to the chart—to December 19 when the subpoena is issued. Mr. Jordan meets with Monica Lewinsky. He confronts her about the relationship. Now, he goes that evening to see the President at the White House to confront him personally about it to discuss this with him. Let's hear from Mr. Jordan, and this is at the White House.

[Text of videotape presentation:]

Q. Now, would you describe your conversation with the President?

A. We were upstairs, uh, in the White House. Mrs. Jordan—we came in by way of the Southwest Gate into the Diplomatic Entrance—we left the car there. I took the elevator up to the residence, and Mrs. Jordan went and visited at the party.

And the President was already upstairs—I had ascertained that from the usher—and I went up, and I raised with him the whole question of Monica Lewinsky and asked him directly if he had had sexual relations with Monica Lewinsky, and the President said, "No, never."

[Text of videotape presentation:]

A. Well, we had established that.

Q. All right. And did you tell him that you were concerned about her fascination?

A. I did.

Q. And did you describe her as being emotional in your meeting that day?

A. I did.

Q. And did you relate to the President that Ms. Lewinsky asked about whether he was going to leave the First Lady at the end of the term?

A. I did.

Q. And as—and then, you concluded that with the question as to whether he had had sexual relations with Ms. Lewinsky?

A. And he said he had not, and I was satisfied—end of conversation.

Q. Now, once again, just as I asked the question in reference to Ms. Lewinsky, it appears to me that this is an extraordinary question to ask the President of the United States. What led you to ask this question to the President?

A. Well, first of all, I'm asking the question of my friend who happens to be the President of the United States.

Q. And did you expect your friend, the President of the United States, to give you a truthful answer?

A. I did.

Q. Did you rely upon the President's answer in your decision to continue your efforts to seek Ms. Lewinsky a job?

A. I believed him, and I continued to do what I had been asked to do.

Q. Well, my question was more did you rely upon the President's answer in your decision to continue your efforts to seek Ms. Lewinsky a job.

A. I did not rely on his answer. I was going to pursue the job in any event. But I got the answer to the question that I had asked Ms. Lewinsky earlier from her, and I got the answer from him that night as to the sexual relationships, and he said no.

You will have to judge for yourselves as to why Mr. Jordan felt compelled to ask the question. He is asking the right questions. It was important information. If the President had said, "Yes; there is," then it would certainly have been inappropriate to continue providing a job benefit for a witness that you are seeking an affidavit from denying a relationship when you know the relationship exists, when that witness would be adverse to the President's interest who is seeking the job.

To some that might be convoluted, and perhaps I didn't explain it as best it can be. But it looks to me like that is why Mr. Jordan is asking the question because he knows it would be inappropriate if that, in fact, did exist. He got an answer "no." I don't know what was in his mind. But clearly you see the conversations develop when Ms. Lewinsky made it totally clear to him without any question that there was that relationship. But still the job benefit was provided.

We are not going to have time to go through it all. But sequentially, the next thing that happens is December 2 when Ms. Lewinsky goes to Mr. Jordan's office where Mr. Jordan drives her in the chauffeur-driven government vehicle to Mr. Frank Carter's office where the attorney is that is provided for Ms. Lewinsky. That is the only time that it happened in the referral that Mr. Jordan took it upon himself to personally deliver a client to Mr. Carter. During that conversation, Ms. Lewinsky tells Mr. Jordan more of the details of their relationship.

But let's go to another element of obstruction—on December 28, a few days after Christmas. You are very familiar with this episode in which Ms. Lewinsky and the President meet. They exchange gifts. The testimony in the Jones case is discussed. There is concern expressed about the gifts. She asks the President in essence, Should I get them out of my house? And you will hear her answer. Her testimony is very clear on this. That is what I would like you to listen to. There is no ambiguity. There are no "what-ifs." It is very clear. And let's move now to the testimony of Ms. Lewinsky.

[Inaudible.]

Mr. LAUTENBERG. I can't hear.

Mr. GRAMM. Can we turn this up?

Mr. Manager HUTCHINSON. I don't think the question is audible.

Well, that is a different—it's not as sophisticated a sound collection system as the U.S. Senate used in the depositions here, so I apologize for the fact that that was inaudible but the question was asked of the President:

Q. After you gave her the gifts on December 28, did you speak with your secretary, Ms. Currie, and ask her to pick up a box of gifts that was some compilation of gifts that Ms. Lewinsky would have?

His answer:

No, sir, I did not do that.

His denial and then the facts presented by Ms. Lewinsky and the circumstantial evidence, the question was asked of Ms. Lewinsky:

Q. Did the President ever tell you to turn over the gifts?
A. Not that I remember.

But when I say that she that testified unequivocally, whenever Ms. Lewinsky was asked "Did you later that day receive a call from Ms. Currie," the answer was, "Yes, I did," and she goes ahead and explains it. There is no hesitation. There is no question. But their memory is clear that the call came from Betty Currie.

Now, how could Betty Currie know to go pick up the gifts? I think you understand there is only one way that could have come about, and that would be through a communication from the President to her.

Now, let's go on down the path. After we see the meeting on December 28, there was a meeting at the Hyatt on December 31. We could play this video—I would like to—with Vernon Jordan and with Ms. Lewinsky. This is a meeting at the Hyatt that Mr. Jordan totally denied ever happened in his first few testimonies before the grand jury. But in his most recent testimony before the Senate, in the deposition, he was confronted with receipts from the Hyatt, and the testimony of Ms. Lewinsky which was clear, and the corroborating facts, and he said yes, in fact, it did happen. Not only did he recall the meeting, but then he recalled what was discussed, that yes, in fact, notes were discussed there.

Ms. Lewinsky testifies that she raised the issue of other evidence that would be possibly in her apartment, notes to the President. According to her testimony, she was told that: You need to get rid of those.

Now, Mr. Jordan totally denies that. But the point is, there is more evidence at risk for the President. Mr. Jordan, who is doing

the work for the President, has this conversation with Ms. Lewinsky that he earlier denied ever happened.

So, I think you look at credibility there. You believe Ms. Lewinsky? If you accept the testimony of Ms. Lewinsky, then you have more evidence that is at issue, and that is being urged to be destroyed and not available for the truth-seeking endeavor in the civil rights case. I think that is significant.

Now, you say that is not the President, that is Mr. Jordan. You have to put this in context. It is Ms. Lewinsky who says that she is talking to the President when she is talking to Mr. Jordan—and I am paraphrasing that, but that is what she was seeing—seeing Mr. Jordan as a conduit to the President.

Then we go on after the meeting in the Hyatt, we go into January, where the job search continues. But it is tied directly to the signing of the affidavit, which is false by its nature.

If we look at the testimony of Mr. Jordan, in the January 5 timeframe where the affidavit is prepared and discussed with Mr. Jordan:

[Text of videotape presentation:]

Q. Do you know why you would have been calling Mr. Carter on 3 occasions the day before the affidavit was signed?

A. Yeah, my recollection is, is that I was exchanging or sharing with Mr. Carter what had gone on, what she asked me to do, what I refused to do, reaffirming to him that he was the lawyer and I was not the lawyer. I mean, it would be so presumptuous of me to try to advise Frank Carter as to how to practice law.

Q. Would you have been relating to Mr. Carter your conversation with Ms. Lewinsky?

A. I may have.

Q. And if Ms. Lewinsky expressed to you any concerns about the affidavit would you have relayed those to Mr. Carter?

A. Yes.

Q. And if Mr. Carter was a good attorney that was concerned about the economics of law practice he would have likely billed Ms. Lewinsky for some of those telephone calls?

A. You have to talk to Mr. Carter about his billing.

So you have Mr. Jordan discussing the affidavit with both Ms. Lewinsky and her attorney, Mr. Carter. And if you look at the testimony of Mr. Carter, he talks about the fact that he did bill some time for his conversations with Mr. Jordan. Certainly they are matters of substance in relation to the affidavit that was being discussed between the three: Ms. Lewinsky, Mr. Jordan, and Mr. Carter.

Now, let's hear what Ms. Lewinsky has to say on the changes that were made in the affidavit:

[Text of videotape presentation:]

Q. OK, have you had an opportunity to review the draft of your affidavit?

A. I—yes.

Q. Do you have any comment or response?

A. I received it. I made the suggested changes. And I believe I spoke with Mr. Jordan about the changes I wanted to make.

Now, because of time, I am not going to be able to go completely through all of their testimony but let me tell you time sequentially what is happening here. This is the second page of the time chart that you have.

January 5 and 6, the affidavit is prepared and discussed with Mr. Jordan and with the President.

On the 7th, the affidavit is signed. You recall Mr. Jordan lets the President know that the affidavit was signed. And he says he was interested, he was obviously interested in this.

On January 8 the job came through, the day after the affidavit was signed. And of course it had to come through, the personal call of Mr. Jordan to Mr. Perelman to "make it happen—if it can happen." Once that job is secured, the President is informed: Mission accomplished.

January 15, there are some inquiries from the news media about the gifts that had been delivered to the White House. This makes Betty Currie nervous enough that she has to go see Mr. Jordan about it.

You go to the 17th; the President gives his deposition in which that false affidavit is presented on behalf of Ms. Lewinsky and the President's attorney.

And then the next day, after that deposition is given, you go to January 18, where he is very concerned because he mentions Betty Currie's name so many times.

We were not able—we did not ask for the deposition of Betty Currie. We wish that we had had that opportunity. We would like to call her here. But that is one of the most critical and important elements of the structure in which the truth is so critically clear, because it happened not just on one day, because it happened on a couple of days.

We see on the 17th, the President is deposed. This is the third chart that you have. The 18th, the President coaches Betty Currie, going through the series of questions. On the 19th, there is this dramatic search for Ms. Lewinsky. On the 20th, the Washington Post story becomes known, because the President's counselors get calls and the OIC investigation becomes known.

On the 21st, at 12:30 a.m., the Post story appears on the Internet. At 12:41, the President calls Bruce Lindsey. At 1:16 a.m, the Post story appears. The President calls Betty Currie for 20 minutes, discusses the Post story. And then, according to Betty Currie, on the 20th or the 21st, it was the second incident of coaching that took place, where the President calls her in and goes through that series of questions: I did nothing wrong; she came on to me; we were never alone. So that was the second time that it happened. And that, ladies and gentlemen of the Senate, is another example of witness tampering: A known witness clearly going to be testifying, a subordinate employee who is called in and coached.

Now, the President says, "I was trying to gain facts." You determine that. You are the ones who have to defend that question as to whether, under common sense, the President was gaining information on two separate occasions or whether he was actually trying to tamper with the testimony of a witness.

The 21st, she is subpoenaed by the OIC. The 23rd, she is added to the Jones witness list.

Now I want to play the last video clip that I am going to move to on Ms. Lewinsky, some things that she said that are different with regard to the President:

[Text of videotape presentation:]

Q. The President did not in that conversation on December 17 of 1997, or any other conversation for that matter, instruct you to tell the truth; is that correct?

A. That's correct.

* * * * *

Q. But the—the pattern that you had with the President to conceal this relationship, it was never questioned that, for instance, that given day that he gave you gifts you were not going to surrender those to the Jones attorneys because that would—

A. In my mind there is no reflection; no.

We have one more here we would like you to listen to.

[Text of videotape presentation:]

A. Sure, gosh, I think to me that if the President had not said to Betty in letters us—cover—let us just say if we refer to that which I am talking about in paragraph 4 of page 4, I would have known to use that. So, to me, encouraging or asking me to lie would have, you know if the President had said now listen you better not say anything about this relationship, you better not tell them the truth, you better not—for me the best way to explain how I feel what happened was, you know, no one asked or encouraged me to lie, but no one discouraged me either.

It is very important to understand that we want you to know very clearly that Ms. Lewinsky says that the President never told her to lie. There is no question about that. There is no dispute about that, either. I think you have to look at all the context of this. What the President did suggest to her was to use an affidavit to avoid truthful testimony, to stick with the cover stories under legal context.

Is the issue here whether Ms. Lewinsky believed the President was encouraging her to lie, that's what the President was trying to do here? Or is the issue what the President was trying to do? It is your determination. You have to make the decision whether the President, in talking to a 24-year-old ex-employee, whether he is encouraging her to come forward and to tell the truth or, in a legal context, to use the old cover stories, to lie, to use false affidavits, to avoid the truth from coming out.

It is not Ms. Lewinsky's viewpoint that is important. It is what the President intended. What did the President intend by this conversation when he told her on December 17, "Guess what, bad news; you're a witness". Then he proceeded to suggest to her ways to avoid truthful testimony.

I really don't care what is in Ms. Lewinsky's mind at that point. The critical issue is what is in the President's mind at that point as to what he was intending. Was it an innocent conversation, or was it a conversation with corrupt intent?

I believe that if you put all of this in context—from the affidavit to the job search, to the coaching of Ms. Betty Currie, to all of the other conversations with the aides—that it was the President's intent to avoid the workings of the administration of justice, to impede the flow of the truth in the administration of justice for his own benefit, and that is what obstruction of justice is about. That is what people go to jail about, and that is what we are presenting to you as a factual basis for this case.

I now yield to my fellow manager, Mr. ROGAN.

RECESS

Mr. LOTT. Mr. Chief Justice, I think it would be appropriate if we take a break at this time for lunch and return at 1:15, and I so ask unanimous consent.

There being no objection, at 12:22 p.m., the Senate recessed until 1:24 p.m.; whereupon, the Senate reassembled when called to order by the Chief Justice.

The CHIEF JUSTICE. The Chair recognizes the majority leader.

Mr. LOTT. Thank you, Mr. Chief Justice.

I believe we are ready to resume the presentation by the House managers, and Mr. Manager ROGAN is prepared to speak.

The CHIEF JUSTICE. The Chair recognizes Mr. Manager ROGAN.

Mr. Manager ROGAN. Mr. Chief Justice, Members of the Senate, before the break, you had the opportunity to hear the very able presentation from Mr. Manager HUTCHINSON relating to the article of impeachment alleging obstruction of justice against the President of the United States. I would like to use my portion to discuss very briefly article I of the impeachment resolution that alleges on August 17, 1998, the President committed perjury before a Federal grand jury conducting a criminal investigation. He did this in a number of ways, embarking on a calculated effort to cover up illegal obstruction of justice.

First, the President lied about statements he made to his top aides regarding his relationship with Monica Lewinsky. This is significant because the President admitted, under oath, that he knew these aides were potential witnesses before a criminal grand jury.

[Text of videotape presentation:]

A. And so I said to them things that were true about this relationship. That I used—in the language I used, I said there was nothing going on between us. That was true. I said I have not had sex with her as I define it. That was true. And did I hope that I never had to be here on this day giving this testimony, of course. But I also didn't want to do anything to complicate this matter further.

So I said things that were true that may have been misleading, and if they were, I have to take responsibility for it, and I am sorry.

Q. It may have been misleading, but you knew, though, after January 21 when the Post article broke and said that Judge Starr was looking into this, you knew they might be witnesses, you knew they might be called into the grand jury?

A. That's right.

Q. And you do recall denying any sexual relationship with Monica Lewinsky to the following people: Harry Thomasson, Erskine Bowles, Harold Ickes, Mr. Podesta, Mr. Blumenthal, Mr. Jordan, Miss Betty Currie. Do you recall denying any sexual relation—

The question to the President: "You knew they might be called into a grand jury, didn't you?" Answer by the President: "That's right."

The President's testimony that he said things that were misleading but true to his aides was perjury.

Just as the President predicted, several of his top aides later were called to testify before the grand jury as to what the President told them. When they testified before the grand jury, they passed along the President's false account, just as the President intended. The President's former chief of staff, Erskine Bowles, and his current chief of staff, John Podesta, went before the grand jury and testified that the President told them he did not have sexual relations with Monica and he did not ask anybody to lie.

Mr. Podesta had an additional meeting with the President 2 days after the story broke. Mr. Podesta testified that at that meeting with the President, the President was extremely explicit in saying

he never had sex with her in any way whatsoever and that he was not alone with her in the Oval Office.

The most glaring example of the President using an aide as a messenger of lies to the grand jury was his manipulation of his Presidential assistant, Mr. Blumenthal. Mr. Blumenthal has been assistant to the President since August of 1997. Mr. Blumenthal testified that dealing with the media was one of his responsibilities on January 21, 1998, the day the Monica Lewinsky story broke. Mr. Blumenthal testified under oath that once the story became public, he attended twice-a-day White House strategy sessions called to deal with the political, legal, and media impact of the Clinton scandals on the White House.

In his deposition testimony taken just this week by authority of the U.S. Senate, Mr. Blumenthal shared in chilling detail the story of how the President responded to the public discovery of his long-standing relationship with a young woman who had shared tearful and emotional descriptions of her love for him. Mr. Clinton responded not in love, not in friendship, not even with a grain of concern for her well-being or emotional stability. Instead, the President took the deep and apparently unrequited emotional attachment Monica Lewinsky had formed for him, and prepared to summarily take her life and throw it on the ash heap.

The date is January 21, 1998. The Lewinsky scandal had just broken in the newspapers that morning. Mr. Blumenthal met initially with the First Lady, Mrs. Clinton, to get her take on the growing political fire storm. Later that day, Mr. Blumenthal is summoned to the Oval Office. Listen as Sidney Blumenthal describes, step by step, the destructive mechanism of the man who twice was elected President under the banner of feeling other people's pain.

[Text of videotape presentation:]

Q. Mr. Blumenthal, specifically inviting your attention to January 21, 1998, you testified before the grand jury that on that date you personally spoke to the President regarding the Monica Lewinsky matter, correct?

A. Yes.

* * * * *

Q. You are familiar with the Washington Post story that broke that day?

A. I am.

* * * * *

Q. The story stated that the Office of Independent Counsel was investigating whether the President made false statements about his relationship with Ms. Lewinsky in the Jones case?

A. Right.

Q. And also that the Office of Independent Counsel was investigating whether the President obstructed justice in the Jones case, is that your best recollection of what that story was about?

A. Yes.

* * * * *

Q. And you now remember that the President asked to speak with you?

A. Yes.

Q. Did you go to the Oval Office?

A. Yes.

Q. During that conversation were you alone with the President?

A. I was.

Q. Do you remember if the door was closed?

A. It was.

Q. When you met with the President, did you relate to him a conversation you had with the First Lady earlier that day?

A. I did.

Q. What did you tell the President the First Lady told you earlier that day?

A. I believe that I told him that the First Lady had called me earlier in the day, and in the light of the story in the Post had told me that the President had helped troubled people in the past and that he had done it many times and that he was a compassionate person and that he helped people also out of his religious conviction and that part it was part of—his nature.

Q. And did she also tell you that one of the other reasons he helped people was out of his personal temperament?

A. Yes. That is what I mean by that.

* * * * *

Q. Do you remember telling the President that the First Lady said to you that she felt that with—in reference to the story that he was being attacked for political motives?

A. I remember her saying that to me, yes.

Q. And you relayed that to the President?

A. I'm not sure I relayed that to the President. I may have just relayed the gist of the conversation to him. I don't —I'm not sure whether I relayed the entire conversation.

Mr. ROGAN: Inviting the Senators and counsel's attention to the June 4th, 1998 testimony of Mr. Blumenthal, page 47, beginning at line 5.

By Mr. ROGAN:

Q. Mr. Blumenthal, let me just read a passage to you and tell me if this helps to refresh your memory?

A. Mm-hmm.

Q. Reading at line 5, "I was in my office, and the President asked me to come to the Oval Office. I was seeing him frequently in this period about the State of the Union and Blair's visit"—that was Prime Minister Tony Blair, as an aide—correct?

A. That's right.

* * * * *

Q. Reading at line 7, "So I went up to the Oval Office and I began a discussion, and I said that I HAD received—that I had spoken to the First Lady that day in the afternoon about the story that had broke in the morning, and I related to the President my conversation with the First Lady and the conversation went as follows. The First Lady said that she was distressed that the President was being attacked, in her view, for political motives for his ministry of a troubled person. She said that the President ministers to troubled people all the time," and then it goes on to—

Does that help refresh your recollection with respect to what you told the President the First Lady had said earlier?

A. Yes.

Q. And do you now remember that the First Lady had indicated to you that she felt the President was being attacked for political motives?

A. Well, I remember she said that to me.

Q. And just getting us back on track, a few moments ago, I think you—you shared with us that the First Lady said that the President helped troubled people and he had done it many times in the past.

A. Yes.

Q. Do you remember testifying before the grand jury on that subject, saying that the First Lady said that he has done this dozens, if not hundreds, of times with people—

A. Yes.

Q. —with troubled people?

A. I recall that.

Q. After you related the conversation that you had with the First Lady to the President, what do you remember saying to the President next about the subject of Monica Lewinsky?

A. Well, I recall telling him that I understood he felt that way, and that he did help people, but that he should stop trying to help troubled people personally, that troubled people are troubled and that they can get you in a lot of messes and that you had to cut yourself off from it and you just had to do it. That's what I recall saying to him.

Q. Do you also remember in that conversation saying to him, "You really need to not do that at this point, that you can't get near anybody who is even remotely crazy. You're President"?

A. Yes. I think that was a little later in the conversation, but I do recall saying that.

Q. When you told the President that he should avoid contact with troubled people, what did the President say to you in response?

A. I'm trying to remember the sequence of it. He—he said that was very difficult for him. He said he—he felt a need to help troubled people, and it was hard for him to—to cut himself off from doing that.

Q. Do you remember him saying specifically, "It's very difficult for me to do that given how I am. I want to help people"?

A. I recall—I recall that.

Q. And when the President referred to helping people, did you understand him in that conversation to be referring to Monica Lewinsky?

A. I think it included Monica Lewinsky, but also many others.

Q. Right, but it was your understanding that he was all—he was specifically referring to Monica Lewinsky in that list of people that he tried to help?

A. I believe that—that was implied.

Q. Do you remember being asked that question before the grand jury and giving the answer, "I understood that"?

A. If you could point it out to me, I'd be happy to see it.

* * * * *

By Mr. ROGAN: Inviting Senators' and counsels' attention to June 25th, 1998 grand jury, page 5, I believe it's at lines 6 through 8.

The WITNESS: Yes, I see that. Thank you.

By Mr. ROGAN:

Q. You recall that now?

A. Yes.

Following this conversation where Mr. Blumenthal told the President about his conversation with the First Lady that day, the President told Mr. Blumenthal about the President's own conversation he had earlier that day with his pollster, Dick Morris.

[Text of videotape presentation:]

Q. Mr. Blumenthal, did the President then relate a conversation he had with Dick Morris to you?

A. He did.

Q. What was the substance of that conversation, as the President related it to you?

A. He said that he had spoken to Dick Morris earlier that day, and that Dick Morris had told him that if Nixon, Richard Nixon, had given a nationally televised speech at the beginning of the Watergate affair, acknowledging everything he had done wrong, he may well have survived it, and that was the conversation that Dick Morris—that's what Dick Morris said to the President.

Q. Did it sound to you like the President was suggesting perhaps he would go on television and give a national speech?

A. Well, I don't know. I didn't know.

Q. When the President related the substance of his conversation with Dick Morris to you, how did you respond to that?

A. I said to the President, "Well, what have you done wrong?"

Q. Did he reply?

A. He did.

Q. What did he say?

A. He said, "I haven't done anything wrong."

Q. And what did you say to that response?

A. Well, I said, as I recall, "That's one of the stupidest ideas I ever heard. If you haven't done anything wrong, why would you do that?"

After denying to Mr. Blumenthal any wrongdoing with Monica Lewinsky, the President then struck the harshest of blows against her. He launched a preemptive strike against her name and her character to an aide who he expected would be, and very shortly became, a witness before a Federal grand jury investigation.

[Text of videotape presentation:]

Q. Did the President then give you his account of what happened between him and Monica Lewinsky?

A. As I recall, he did.

Q. What did the President tell you?

A. He, uh—he spoke, uh, fairly rapidly, as I recall, at that point and said that she had come on to him and made a demand for sex, that he had rebuffed her, turned her down, and that she, uh, threatened him. And, uh, he said that she said to him, uh, that she was called "the stalker" by her peers and that she hated the term, and that she would claim that they had had an affair whether they had or they hadn't, and that she would tell people.

Q. Do you remember him also saying that the reason Monica Lewinsky would tell people that is because then she wouldn't be known by her peers as "the stalker" anymore?

A. Yes, that's right.

Q. Do you remember the President also saying that—and I'm quoting—"I've gone down that road before. I've caused pain for a lot of people. I'm not going to do that again"?

A. Yes. He told me that.

Q. And that was in the same conversation that you had with the President?

A. Right, in—in that sequence.

Q. Can you describe for us the President's demeanor when he shared this information with you?

A. Yes. He was, uh, very upset. I thought he was, a man in anguish.

Q. And at that point, did you repeat your earlier admonition to him as far as not trying to help troubled people?

A. I did. I—I think that's when I told him that you can't get near crazy people, uh, or troubled people. Uh, you're President; you just have to separate yourself from this.

Q. And I'm not sure, based on your testimony, if you gave that admonition to him once or twice. Let me—let me clarify for you why my questioning suggested it was twice. In your grand jury testimony on June the 4th, at page 49, beginning at line 25, you began the sentence by saying, and I quote, "And I repeated to the President"—

A. Right.

Q. —"that he really needed never to be near people who were"—

A. Right.

Q. —"troubled like this," and so forth. Do you remember now if you—if that was correct? Did you find yourself in that conversation having to repeat the admonition to him that you'd given earlier?

A. I'm sure I did. Uh, I felt—I felt that pretty strongly. He shouldn't be involved with troubled people.

Q. Do you remember the President also saying something about being like a character in a novel?

A. I do.

Q. What did he say?

A. Uh, he said to me, uh, that, uh, he felt like a character in a novel. Uh, he felt like somebody, uh, surrounded by, uh, an oppressive environment that was creating a lie about him. He said he felt like, uh, the character in the novel Darkness at Noon.

Q. Did he also say he felt like he can't get the truth out?

A. Yes, I—I believe he said that.

Q. Politicians are always loathe to confess their ignorance, particularly on videotape. I will do so. I'm unfamiliar with the novel Darkness at Noon. Did you—do you have any familiarity with that, or did you understand what the President meant by that?

A. I—I understood what he meant. I—I was familiar with the book.

Q. What—what did he mean by that, per your understanding?

A. Uh, the book is by Arthur Koestler, who was somebody who had been a communist and had become disillusioned with communism. And it's an anti-communist novel. It's about, uh, uh, the Stalinist purge trials and somebody who was a loyal communist who then is put in one of Stalin's prisons and held on trial and executed, uh, and it's about his trial.

Q. Did you understand what the President was trying to communicate when he related his situation to the character in that novel?

A. I think he felt that the world was against him.

Q. I thought only Members of Congress felt that way.

The President continued to pass along false information to Mr. Blumenthal with regard to the substance of his relationship with Monica Lewinsky.

[Text of videotape presentation:]

Mr. Blumenthal, did you ever ask the President if he was ever alone with Monica Lewinsky?

A. I did.

Q. What was his response?

A. I asked him a number of questions that appeared in the press that day. I asked him, uh, if he were alone, and he said that, uh, he was within eyesight or earshot of someone when he was with her.

Q. What other questions do you remember asking him?

A. Uh, there was a story in the paper that, uh, there were recorded messages, uh, left by him on her voice-mail and I asked him if that were true.

Q. What did he say?

A. He said, uh, that it was, that, uh, he had called her.

Q. You had asked him about a press account that said there were potentially a number of telephone messages left by the President for Monica Lewinsky. And he relayed to you that he called her. Did he tell you how many times he called her?

A. He—he did. He said he called once. He said he called when, uh, Betty Currie's brother had died, to tell her that.

Q. And other than that one time that he shared that information with you, he shared no other information respecting additional calls?

A. No.

Q. He never indicated to you that there were over 50 telephone conversations between himself and Monica Lewinsky?

A. No.

Q. Based on your conversation with the President at that time, would it have surprised you to know that there were over 50—there were records of over 50 telephone conversations with Monica Lewinsky and the President?

A. Would I have been surprised at that time?

Q. Yes.

A. Uh, I—to see those records and if he—I don't fully grasp the question here. Could you—would I have been surprised?

Q. Based on the President's response to your question at that time, would it have surprised you to have been told or to have later learned that there were over 50 recorded—50 conversations between the President and Ms. Lewinsky?

A. I did later learn that, uh, as the whole country did, uh, and I was surprised.

Q. When the President told you that Monica Lewinsky threatened him, did you ever feel compelled to report that information to the Secret Service?

A. No.

Q. The FBI or any other law enforcement organization?

A. No.

Q. I'm assuming that a threat to the President from somebody in the White House would normally send off alarm bells among staff.

A. It wouldn't—

MR. McDANIEL: Well, I'd like to object to the question, Senator. There's no testimony that Mr. Blumenthal learned of a threat contemporaneously with it being made by someone in the White House. This is a threat that was relayed to him sometime afterwards by someone who was no longer employed in the White House. So I think the question doesn't relate to the testimony of this witness.

MR. ROGAN: Respectfully, I'm not sure what the legal basis of the objection is. The evidence before us is that the President told the witness that Monica Lewinsky threatened him.

[Senators SPECTER and EDWARDS conferring.]

SENATOR SPECTER: We've conferred and overrule the objection on the ground that it calls for an answer; that, however the witness chooses to answer it, was not a contemporaneous threat, or he thought it was stale, or whatever he thinks. But the objection is overruled.

MR. ROGAN: Thank you.

BY MR. ROGAN:

Q. Let me—let me restate the question, if I may. Mr. Blumenthal, would a threat—

SENATOR SPECTER: We withdraw the ruling.

[Laughter.]

MR. McDANIEL: I withdraw my objection, then.

[Laughter.]

MR. ROGAN: Senator Specter, the ruling is just fine by my light. I'm just going to try to simplify the question for the witness' benefit.

SENATOR SPECTER: We'll hold in abeyance a decision on whether to reinstate the ruling.

MR. ROGAN: Thank you. Maybe I should just quit while I'm ahead and have the question read back.

BY MR. ROGAN:

Q. Basically, Mr. Blumenthal, what I'm asking is, I mean, normally, would a threat from somebody against the President in the White House typically require some sort of report being made to a law enforcement agency?

A. Uh, in the abstract, yes.

Q. This conversation that you had with the President on January the 21st, 1998, how did that conversation conclude?

A. Uh, I believe we, uh—well, I believe after that, I said to the President that, uh—who was—seemed to me to be upset, that you needed to find some sure footing and to be confident. And, uh, we went on, I believe, to discuss the State of the Union.

Q. You went on to other business?

A. Yes, we went on to talk about public policy.

Q. When this conversation with the President concluded as it related to Monica Lewinsky, what were your feelings toward the President's statement?

A. Uh, well, they were complex. Uh, I believed him, uh, but I was also, uh—I thought he was very upset. That troubled me. And I also was troubled by his association with troubled people and thought this was not a good story and thought he shouldn't be doing this.

Q. Do you remember also testifying before the grand jury that you felt that the President's story was a very heartfelt story and that "he was pouring out his heart, and I believed him"?

A. Yes, that's what I told the grand jury, I believe; right.

Q. That was—that was how you interpreted the President's story?

A. Yes, I did. He was, uh—he seemed—he seemed emotional.

Q. When the President told you he was helping Monica Lewinsky, did he ever describe to you how he might be helping or ministering to her?

A. No.

Q. Did he ever describe how many times he may have tried to help or minister to her?

A. No.

Q. Did he tell you how many times he visited with Monica Lewinsky?

A. No.

Q. Did he tell you how many times Monica Lewinsky visited him in the Oval Office complex?

A. No.

Q. Did he tell you how many times he was alone with Monica Lewinsky?

A. No.

Q. He never described to you any intimate physical activity he may have had with Monica Lewinsky?

A. Oh, no.

Q. Did the President ever tell you that he gave any gifts to Monica Lewinsky?

A. No.

Q. Did he tell you that Monica Lewinsky gave him any gifts?

A. No.

Q. Based on the President's story as he related on January 21st, would it have surprised you to know at that time that there was a repeated gift exchange between Monica Lewinsky and the President?

A. Well, I learned later about that, and I was surprised.

Q. The President never told you that he engaged in occasional sexual banter with her on the telephone?

A. No.

Q. He never told you about any cover stories that he and Monica Lewinsky may have developed to disguise a relationship?

A. No.

Q. He never suggested to you that there might be some physical evidence pointing to a physical relationship between he—between himself and Monica Lewinsky?

A. No.

Q. Did the President ever discuss his grand jury—or strike that.

Did the President ever discuss his deposition testimony with you in the Paula Jones case on that date?

A. Oh, no.

Q. Did he ever tell you that he denied under oath in his Paula Jones deposition that he had an affair with Monica Lewinsky?

A. No.

Q. Did the President ever tell you that he ministered to anyone else who then made a sexual advance toward him?

A. No.

One of the things that the President's counsel has continuously urged upon this body, as they did over in the House of Representatives, is to look at the President's state of mind in determining whether, in fact, he committed the crime of perjury. We hope that you will do that. Because nowhere is the President's state of mind more evident than it is in the manner in which he dealt with Sidney Blumenthal at this point.

Remember, the date of this conversation that Sidney Blumenthal just related to you was January 21, the day the Monica Lewinsky story broke. About a month later, Sidney Blumenthal was called to testify as a witness before the grand jury. That was the first time.

Five months later or 4 months later Sidney Blumenthal was called back to testify to the grand jury—not once, but two more times. From January 21 until the end of June 1998, the President had almost 6 months in which to tell Sidney Blumenthal, after he was subpoenaed, but before he testified, not to tell the grand jury information that was false. The President had the opportunity to not use his aide as a conduit of false information. Listen to what Sidney Blumenthal said the President failed to tell him.

[Text of videotape presentation:]

Q. After you were subpoenaed to testify but before you testified before the Federal grand jury, did the President ever recant his earlier statements to you about Monica Lewinsky?

A. No.

Q. After you were subpoenaed but before you testified before the federal grand jury, did the President ever say that he did not want you to mislead the grand jury with a false statement?

A. No. We didn't have any subsequent conversation about this matter.

Q. So it would be fair also to say that after you were subpoenaed but before you testified before the Federal grand jury, the President never told you that he was not being truthful with you in that January 21st conversation about Monica Lewinsky?

A. Uh, he never spoke to me about that at all.

Q. The President never instructed you before your testimony before the grand jury not to relay his false account of his relationship with Monica Lewinsky?

A. We—we didn't speak about anything.

The President of the United States used a special assistant, one of his aides, as a conduit to go before a Federal grand jury and present false and misleading information and precluded the grand jury from being able to make an honest determination in their investigation. He obstructed justice when he did it, and when he denied that testimony he committed the offense of perjury.

In response to a question from Mr. Manager GRAHAM, Mr. Blumenthal candidly addressed the President's claim under oath that he was truthful with his aides that he knew would be future grand jury witnesses:

[Text of videotape presentation:]

Q. . . . Knowing what you know now, do you believe the President lied to you about his relationship with Ms. Lewinsky?

A. I do.

Q. I appreciate your honesty . . . .

* * * * *

Q. . . . Is it a fair statement, given your previous testimony concerning your 30-minute conversation, that the President was trying to portray himself as a victim of a relationship with Monica Lewinsky?

A. I think that's the import of his whole story.

In an earlier presentation, the President's attorney, Mr. Ruff, said that the very same denial the President made to his family and his friends was the same one he made to the American people. Mr. Ruff said:

Having made the announcement to the whole country, it is simply absurd, I suggest to you, to believe that he was somehow attempting corruptly to influence his senior staff when he told them virtually the same thing at the same time.

Members of the Senate, Mr. Ruff's conclusion is wrong because his premise is wrong. The President didn't tell the American public and his aides the same thing, nor did he make the very same denial. On the contrary, the President went out of his way with his aides to make explicit denials, coupled with character assassination against Monica Lewinsky. Why the distinction? Because the American public was not destined to be subpoenaed as a witness before the grand jury and the President's aides were.

Members of the Senate, our time draws short. The record is replete with other examples which I have addressed and Mr. Manager HUTCHINSON has addressed dealing with the President's perjuries in other areas, for instance, in the Paula Jones deposition where he emphatically denied having a relationship with Monica Lewinsky that we now know to be true, a relationship that a Federal judge ordered him to discuss with Paula Jones' attorneys because it was relevant information in the sexual civil harassment lawsuit.

The President's perjury is with respect to Betty Currie and using Betty Currie as somebody to be brought into the Oval Office so that he could coach her as a witness and doing everything he could in his own testimony to ensure that the Jones attorney would subpoena her as a witness, to once again use a White House aide as a conduit of false information before the grand jury.

I don't feel the need to have to go over this ground with you any further. In my final couple of minutes, before I reserve time, I do want to raise one last point, because I think it is a valid one and it, perhaps, in the long run, is the most important point that this body should consider in coming to their verdict.

We have heard an awful lot throughout this entire episode about the idea of proportionality of punishment. We have also heard that lying about sex somehow minimizes the perjury because everybody does it. Many people in everyday life under the stress of ordinary relations may well lie about personal matters when confronted with embarrassing situations. But, no, everybody doesn't commit perjury under oath in a court proceeding, having been ordered by a Federal judge to answer questions. And if they did so, they generally don't expect to keep their job or their liberty if they get caught.

The dispensation this President wants for himself is not the same dispensation he grants as head of the executive branch to ordinary Americans when they lie about sex under oath. Bill Clinton

wants it both ways. The question before this body is whether you are going to give it to him.

During our committee hearings, we learned the Clinton administration had no shyness in prosecuting other people for lying under oath about consensual sex in civil cases, even when the underlying civil case was dismissed. For instance, Dr. Barbara Battalino was an attorney and a VA doctor when she began a relationship with one of her counseling patients at a VA hospital. On a single occasion, she performed an inappropriate sexual act with him in her office. The patient later sued the Veterans Administration for, among other things, sexual harassment.

During a deposition in this civil lawsuit, Dr. Battalino was asked if anything of a sexual nature took place in her office with the patient. Fearing embarrassment, disgrace and the loss of her job, Dr. Battalino answered, "No." Later, she learned the patient had tape recorded conversations which proved she lied about sex under oath.

Even though the patient's harassment case was eventually dismissed, the Clinton Justice Department prosecuted Dr. Battalino. She lost her medical license. She lost her right to practice law. She was fired from her job. She later agreed to a plea bargain. She was fined $3,500 and sentenced to 6 months of imprisonment under electronic monitoring.

Listen to the words of Dr. Battalino as she testified before the House Judiciary Committee, and then explain to her the theory of proportionality, if you can.

[Text of videotape presentation:]

Dr. Battalino, your case intrigues me.

I want to make sure I understand the factual circumstances. You lied about a one-time act of consensual sex with someone on Federal property; is that correct?

Ms. Battalino. Yes, absolutely, correct.

Mr. Rogan. This act of perjury was in a civil lawsuit, not in a criminal case?

Ms. Battalino. That's also correct.

Mr. Rogan. And, in fact, the civil case eventually was dismissed?

Ms. Battalino. Correct.

Mr. Rogan. Yet despite the dismissal, you were prosecuted by the Clinton Justice Department for this act of perjury; is that correct?

Ms. Battalino. That is correct.

Mr. Rogan. I want to know, Dr. Battalino: During your ordeal, during your prosecution, did anybody from the White House, from the Clinton Justice Department, any Members of Congress, or academics from respected universities every show up at your trial and suggest that you should be treated with leniency because "everybody lies about sex"?

Ms. Battalino. No, sir.

Mr. Rogan. Did anybody ever come forward from the White House or from the Clinton Justice Department and urge leniency for you because your perjury was only in a civil case?

Ms. Battalino. No.

Mr. Rogan. Did they argue for leniency because the civil case in which you committed perjury was ultimately dismissed?

Ms. Battalino. No.

Mr. Rogan. Did anybody from the White House ever say that leniency should be granted to you because you otherwise did your job very well?

Ms. Battalino. No.

Mr. Rogan. Did anybody ever come forward from Congress to suggest that you were the victim of an overzealous or sex-obsessed prosecutor?

Ms. Battalino. No.

Mr. Rogan. Now, according to the New York Times, they report that you lied when your lawyer asked you at a deposition whether "anything of a sexual nature" occurred; is that correct?

Ms. Battalino. Yes, that is correct.

Mr. Rogan. Did anybody from Congress or from the White House come forward to defend you, saying that that phrase was ambiguous or it all depended on what the word "anything" meant?

Ms. Battalino. No, sir. May I just—I am not sure it was my lawyer that asked the question, but that is the exact question that I was asked.

Mr. Rogan. The question that was asked that caused your prosecution for perjury.

Ms. Battalino. That's correct.

Mr. Rogan. No one ever argued that that phrase itself was ambiguous, did they?

Ms. Battalino. No.

Ms. Waters. Will the gentleman yield?

Mr. Rogan. Regrettably, my time is limited and I will not yield for that reason. Now, Doctor, you lost two licenses. You lost a law license.

Ms. Battalino. Well, I have a law degree. I was not a member of any bar.

Mr. Rogan. Your conviction precludes you from practicing law?

Ms. Battalino. That is correct, sir.

Mr. Rogan. You also had a medical degree and license.

Ms. Battalino. That is correct.

Mr. Rogan. You lost your medical license?

Ms. Battalino. Yes. I am no longer permitted to practice medicine either.

Mr. Rogan. Did anybody from either the White House or from Congress come forward during your prosecution, or during your sentencing, and suggest that rather than you suffer the severe punishment of no longer being able to practice your profession, perhaps you should simply just receive some sort of rebuke or censure?

Ms. Battalino. No one came to my aid or defense, no.

Mr. Rogan. Nobody from the Clinton Justice Department suggested that during your sentencing hearing?

Ms. Battalino. No.

Mr. Rogan. Has anybody come forward from the White House to suggest to you that in light of circumstances, as we now see them unfolding, you should be pardoned for your offense?

Ms. Battalino. Nobody has come no. . . .

That is how the Clinton administration defines proportionality in punishment.

Mr. Chief Justice, we reserve the remainder of our time.

The CHIEF JUSTICE. Very well. The Chair recognizes the majority leader.

Mr. LOTT. Mr. Chief Justice, I believe now we are prepared to hear from White House counsel for up to 3 hours. How much time is remaining for the House managers?

The CHIEF JUSTICE. Thirty-one minutes.

Mr. LOTT. Does the Chief Justice suggest we take a brief break here?

The CHIEF JUSTICE. No, let's keep going.

Mr. LOTT. All right, sir.

[Laughter.]

Mr. LOTT. I guess that settles that.

[Laughter.]

The CHIEF JUSTICE. The Chair recognizes Counsel Seligman.

Ms. Counsel SELIGMAN. Mr. Chief Justice, ladies and gentlemen of the Senate, the House managers have suggested to you that the deposition of Ms. Lewinsky helped their case. The opposite is true. Ms. Lewinsky undermined critical aspects of the House managers' obstruction case.

As those of you who watched the entire video are well aware, the managers have cleverly snipped here and there in an effort to present their story even if, as a result, the story they are telling you is not Ms. Lewinsky's story. They have distorted, they have omitted, and they have created a profoundly erroneous impression.

So let's look at the facts.

In her deposition this week, Ms. Lewinsky reaffirmed her previous testimony and provided extremely useful supplements to that testimony. We asked her no questions. Why? Because there was no need. Her testimony exonerated the President. In four areas in particular, what she said demonstrates that the allegations in the articles cannot stand.

First, she refuted the allegations in article II, subpart (1), with respect to alleged efforts to obstruct and influence Ms. Lewinsky's affidavit.

Second, she contradicted the allegations in article II, subpart (2), with respect to alleged efforts to influence Ms. Lewinsky's testimony as distinct from her affidavit.

Third, she undermined the allegations in article II, subpart (3), with respect to alleged efforts to conceal gifts.

And fourth, she rebutted the allegations in article II, subpart (4), with respect to Ms. Lewinsky's job search.

I will discuss each briefly.

Let's begin with the December 17 phone call between the President and Ms. Lewinsky, which is at the heart of article II's first two subparts. The managers have consistently exaggerated the facts, the impact, and the import of this conversation. They have relentlessly argued that you should draw inferences and conclusions that are not supported by the evidence. Ms. Lewinsky's testimony this week should put an end to these inflated claims about that call.

Article II charges, in subpart (1), that the President: "On or about December 17, 1997 . . . corruptly encouraged a witness in a Federal civil rights action brought against him to execute a sworn affidavit in that proceeding that he knew to be perjurious, false and misleading."

"On or about December 17." In other words, the allegation is firmly grounded in the December 17 phone call. That is where the House of Representatives charged the deed was done. That is the single event on which the managers base the first obstruction of justice charge.

Indeed, Mr. Manager MCCOLLUM made this point emphatically before the Senate. He claimed:

> In this context, the evidence is compelling that the President committed both the crimes of obstruction of justice and witness tampering right then and there on December 17th.

He went on:

> Now, Monica Lewinsky's testimony is so clear about this that the President's lawyers probably won't spend a lot of time with you on this; they didn't in the Judiciary Committee. I could be wrong, and they probably will just to show me I am wrong.

Well, Mr. MCCOLLUM was wrong in one respect. We do plan to spend time on that call. But he was absolutely right in another respect. He was correct that Ms. Lewinsky's testimony is so clear on this issue. It is so clear it exonerates the President.

The managers asked this body to permit the deposition and later the live testimony of Ms. Lewinsky to complete their proof. As Mr. Manager BRYANT stated:

> An appropriate examination—and an appropriate cross-examination, I might add; let's don't limit the White House attorneys here—of Ms. Lewinsky on the factual disputes of the affidavit and their cover story, wouldn't that be nice to hear?

Well, the managers got their examination of Ms. Lewinsky about the December 17 phone call, and it defeated the charge. It showed that she and the President did not discuss the content of an affidavit—never ever. Again, the managers ask you to convict the President and remove him from office for what turns out to be his silence. No discussion of content.

Let's listen to the testimony of Monica Lewinsky about that December 17 phone call. It is critically important. And we are showing it to you unvarnished, not in snippets, because the snippets you have seen are terribly misleading. The tape you will hear establishes beyond doubt that she and the President did not discuss the content of the affidavit in that call, or ever. It establishes beyond doubt that what happened is not obstruction of justice.

[Text of videotape presentation:]

Q. Sometime back in December of 1997, in the morning of December the 17th, did you receive a call from the President?

A. Yes.

Q. What was the purpose of that call? What did you talk about?

A. It was threefold—first, to tell me that Ms. Currie's brother had been killed in a car accident; second, to tell me that my name was on a witness list for the Paula Jones case; and thirdly, he mentioned the Christmas present he had for me.

Q. This telephone call was somewhere in the early morning hours of 2 o'clock to 2:30.

A. Correct.

Q. Did it surprise you that he called you so late?

A. No.

Q. Was this your first notice of your name being on the Paula Jones witness list?

A. Yes.

Q. I realize he, he commented about some other things, but I do want to focus on the witness list.

A. Okay.

Q. Did he say anything to you about how he felt concerning this witness list?

A. He said it broke his heart that, well, that my name was on the witness list. Can I take a break, please? I'm sorry.

SENATOR DeWINE: Sure, sure.

* * * * *

BY MR. BRYANT:

Q. Did—did we get your response? We were talking about the discussion you were having with the President over the telephone, early morning of the December 17th phone call, and he had, uh, mentioned that it broke his heart that you were on that list.

A. Correct.

Q. And I think you were about to comment on that further, and then you need a break.

A. No.

Q. No.

A. I just wanted to be able to focus—I know this is an important date, so I felt I need a few moments to be able to focus on it.

Q. And you're comfortable now with that, with your—you are ready to talk about that?

A. Comfortable, I don't know, but I'm ready to talk about.

Q. Well, I mean comfortable that you can focus on it.

A. Yes, sir.

Q. Good. Now, with this discussion of the fact that your name appeared as a witness, had you—had you been asleep that night when the phone rang?

A. Yes.

Q. So were you wide awake by this point? It's the President calling you, so I guess you're—you wake up.

A. I wouldn't say wide awake.

Q. He expressed to you that your name—you know, again, you talked about some other things—but he told you your name was on the list.

A. Correct.

Q. What was your reaction to that?

A. I was scared.

Q. What other discussion did you have in regard to the fact that your name was on the list? You were scared; he was disappointed, or it broke his heart. What other discussion did you have?

A. Uh, I believe he said that, uh—and these are not necessarily direct quotes, but to the best of my memory, that he said something about that, uh, just because my name was on the list didn't necessarily mean I'd be subpoenaed; and at some point, I asked him what I should do if I received a subpoena. He said I should, uh, I should let Ms. Currie know. Uh—

Q. Did he say anything about an affidavit?

A. Yes.

Q. What did he say?

A. He said that, uh, that I could possibly file an affidavit if I—if I were subpoenaed, that I could possibly file an affidavit maybe to avoid being deposed.

Q. How did he tell you you would avoid being deposed by filing an affidavit?

A. I don't think he did.

Q. You just accepted that statement?

A. [Nodding head.]

Q. Yes?

A. Yes, yes. Sorry.

Q. Are you, uh—strike that. Did he make any representation to you about what you could say in that affidavit or—

A. No.

Q. What did you understand you would be saying in that affidavit to avoid testifying?

A. Uh, I believe I've testified to this in the grand jury. To the best of my recollection, it was, uh—to my mind came—it was a range of things. I mean, it could either be, uh, something innocuous or could go as far as having to deny the relationship. Not being a lawyer nor having gone to law school, I thought it could be anything.

Q. Did he at that point suggest one version or the other version?

A. No. I didn't even mention that, so there, there wasn't a further discussion—there was no discussion of what would be in an affidavit.

Q. When you say, uh, it would be—it could have been something where the relationship was denied, what was your thinking at that point?

A. I—I—I think I don't understand what you're asking me. I'm sorry.

Q. Well, based on prior relations with the President, the concocted stories and those things like that, did this come to mind? Was there some discussion about that, or did it come to your mind about these stories—the cover stories?

A. Not in connection with the—not in connection with the affidavit.

Q. How would—was there any discussion of how you would accomplish preparing or filing an affidavit at that point?

A. No.

Q. Why—why didn't you want to testify? Why would not you—why would you have wanted to avoid testifying?

A. First of all, I thought it was nobody's business. Second of all, I didn't want to have anything to do with Paula Jones or her case. And—I guess those two reasons.

Q. You—you have already mentioned that you were not a lawyer and you had not been to law school, those kinds of things. Did, uh, did you understand when you—the potential legal problems that you could have caused yourself by allowing a false affidavit to be filed with the court, in a court proceeding?

A. During what time—I mean—I—can you be—I'm sorry—

Q. At this point, I may ask it again at later points, but the night of the telephone—

A. Are you—are you still referring to December 17th?

Q. The night of the phone call, he's suggesting you could file an affidavit. Did you appreciate the implications of filing a false affidavit with the court?

A. I don't think I necessarily thought at that point it would have to be false, so, no, probably not. I don't—I don't remember having any thoughts like that, so I imagine I would remember something like that, and I don't, but—

Q. Did you know what an affidavit was?

A. Sort of.

Q. Of course, you're talking at that time by telephone to the President, and he's—and he is a lawyer, and he taught law school—I don't know—did you know that? Did you know he was a lawyer?

A. I—I think I knew it, but it wasn't something that was present in my, in my thoughts, as in he's a lawyer, he's telling me, you know, something.

Q. Did the, did the President ever tell you, caution you, that you had to tell the truth in an affidavit?

A. Not that I recall.

Q. It would have been against his interest in that lawsuit for you to have told the truth, would it not?

A. I'm not really comfortable—I mean, I can tell you what would have been in my best interest, but I—

Q. But you didn't file the affidavit for your best interest, did you?

A. Uh, actually, I did.

Q. To avoid testifying.

A. Yes.

Q. But had you testified truthfully, you would have had no—certainly, no legal implications—it may have been embarrassing, but you would have not had any legal problems, would you?

A. That's true.

Q. Did you discuss anything else that night in terms of—I would draw your attention to the cover stories. I have alluded to that earlier, but, uh, did you talk about cover story that night?

A. Yes, sir.

Q. And what was said?

A. Uh, I believe that, uh, the President said something—you can always say you were coming to see Betty or bringing me papers.

Q. I think you've testified that you're sure he said that that night. You are sure he said that that night?

A. Yes.

Q. Now, was that in connection with the affidavit?

A. I don't believe so, no.

Q. Why would he have told you you could always say that?

A. I don't know.

* * * * *

We're at that point that we've got a telephone conversation in the morning with you and the President, and he has among other things mentioned to you that your name is on the Jones witness list. He has also mentioned to you that perhaps you could file an affidavit to avoid possible testifying in that case. Is that right?

A. Correct.

Q. And he has also, I think, now at the point that we were in our questioning, referenced the cover story that you and he had had, that perhaps you could say that you were coming to my office to deliver papers or to see Betty Currie; is that right?

A. Correct. It was from the entire relationship, that story.

Q. Now, when he alluded to that cover story, was that instantly familiar to you?

A. Yes.

Q. You knew what he was talking about?

A. Yes.

Q. And why was this familiar to you?

A. Because it was part of the pattern of the relationship.

Q. Had you actually had to use elements of this cover story in the past?

A. I think so, yes.

* * * * *

Q. Okay. Now let me go back again to the December 11th date—I'm sorry—the 17th. This is the conversation in the morning. What else—was there anything else you talked about in terms of—other than your name being on the list and the affidavit and the cover story?

A. Yes. I had—I had had my own thoughts on why and how he should settle the case, and I expressed those thoughts to him. And at some point, he mentioned that he still had this Christmas present for me and that maybe he would ask Mrs. Currie to come in that weekend, and I said not to because she was obviously going to be in mourning because of her brother.

* * * * *

Q. As I understand your testimony, too, the cover stories were reiterated to you by the President that night on the telephone—

A. Correct.

Q. —and after he told you you would be a witness—or your name was on the witness list, I should say?

A. Correct.

Q. And did you understand that since your name was on the witness list that there would be a possibility that you could be subpoenaed to testify in the Paula Jones case?

A. I think I understood that I could be subpoenaed, and there was a possibility of testifying. I don't know if I necessarily thought it was a subpoena to testify, but—

Q. Were you in fact subpoenaed to testify?

A. Yes.

Q. And that was what—

A. December 19th, 1997.

Q. December 19th.

Now, you have testified in the grand jury. I think your closing comments was that no one ever asked you to lie, but yet in that very conversation of December the 17th, 1997 when the President told you that you were on the witness list, he also suggested that you could sign an affidavit and use misleading cover stories. Isn't that correct?

A. Uh—well, I—I guess in my mind, I separate necessarily signing affidavit and using misleading cover stories. So, does—

Q. Well, those two—

A. Those three events occurred, but they don't—they weren't linked for me.

Q. But they were in the same conversation, were they not?

A. Yes, they were.

Q. Did you understand in the context of the conversation that you would deny the—the President and your relationship to the Jones lawyers?

A. Do you mean from what was said to me or—

Q. In the context of that—in the context of that conversation, December the 17th—

A. I—I don't—I didn't—

Q. Okay. Let me ask it. Did you understand in the context of the telephone conversation with the President that early morning of December the 17th—did you understand that you would deny your relationship with the President to the Jones lawyers through use of these cover stories?

A. From what I learned in that—oh, through those cover stories, I don't know, but from what I learned in that conversation, I thought to myself I knew I would deny the relationship.

Q. And you would deny the relationship to the Jones lawyers?

A. Yes, correct.

Q. Good.

A. If—if that's what it came to.

Q. And in fact you did deny the relationship to the Jones lawyers in the affidavit that you signed under penalty of perjury; is that right?

A. I denied a sexual relationship.

Q. The President did not in that conversation on December the 17th of 1997 or any other conversation, for that matter, instruct you to tell the truth; is that correct?

A. That's correct.

Q. And prior to being on the witness list, you—you both spoke—

A. Well, I guess any conversation in relation to the Paula Jones case. I can't say that any conversation from the—the entire relationship that he didn't ever say, you know, "Are you mad? Tell me the truth." So—

Q. And prior to being on the witness list, you both spoke about denying this relationship if asked?

A. Yes. That was discussed.

Q. He would say something to the effect that—or you would say that—you—you would deny anything if it ever came up, and he would nod or say that's good, something to that effect; is that right?

A. Yes, I believe I testified to that.

Q. In his answer to this proceeding in the Senate, he has indicated that he thought he had—might have had a way that he could have you—get you to file a—basically a true affidavit, but yet still skirt these issues enough that you wouldn't be called as a witness.

Did he offer you any of these suggestions at this time?

A. He didn't discuss the content of my affidavit with me at all, ever.

Now, there is a lot there, but that's the testimony. I would like to go quickly through some parts of it. First, let's be very clear, as you saw, Ms. Lewinsky repeatedly told Mr. Manager BRYANT that she and the President did not discuss the content of the affidavit in that phone call.

Let's listen quickly again:

[Text of videotape presentation:]

Q. Are you, uh—strike that. Did he make any representation to you about what you could say in that affidavit or—

A. No.

Q. What did you understand you would be saying in that affidavit to avoid testifying?

A. Uh, I believe I've testified to this in the grand jury. To the best of my recollection, it was, uh—to my mind came—it was a range of things. I mean, it could either be, uh, something innocuous or could go as far as having to deny the relationship. Not being a lawyer nor having gone to law school, I thought it could be anything.

Q. Did he at that point suggest one version or the other version?

A. No. I didn't even mention that, so there, there wasn't a further discussion—there was no discussion of what would be in an affidavit.

* * * * *

Q. In his answer to this proceeding in the Senate, he has indicated that he thought he had—might have had a way that he could have you—get you to file a—basically a true affidavit, but yet still skirt these issues enough that you wouldn't be called as a witness.

Did he offer you any of these suggestions at this time?

A. He didn't discuss the content of my affidavit with me at all, ever.

Now, ladies and gentlemen, the managers skipped these excerpts. They hid from you this key fact about the call. To borrow a phrase, they "want to win too badly."

In that excerpt, Ms. Lewinsky also made clear that the President only suggested she might be able to file an affidavit that might enable her to avoid testifying.

Let's listen:

[Text of videotape presentation:]

Q. Did he say anything about an affidavit?

A. Yes.

Q. What did he say?

A. He said that, uh, that I could possibly file an affidavit if I—if I were subpoenaed, that I could possibly file an affidavit maybe to avoid being deposed.

Q. How did he tell you you would avoid being deposed by filing an affidavit?

A. I don't think he did.

Q. You just accepted that statement?

A. [Nodding head.]

Q. Yes?

A. Yes, yes. Sorry.

* * * * *

Q. And in that same telephone conversation, he encouraged you to file an affidavit in the Jones case?

A. He suggested I could file an affidavit.

She also made clear that the President was not certain she even would be subpoenaed and have to confront the issue.

[Text of videotape presentation:]

Q. What other discussion did you have in regard to the fact that your name was on the list? You were scared; he was disappointed, or it broke his heart. What other discussion did you have?

A. Uh, I believe he said that, uh—and these are not necessarily direct quotes, but to the best of my memory, that he said something about that, uh, just because my name was on the list didn't necessarily mean I'd be subpoenaed; and at some point, I asked him what I should do if I received a subpoena. He said I should, uh, I should let Ms. Currie know. Uh——

* * * * *

Q. How would—was there any discussion of how you would accomplish preparing or filing an affidavit at that point?

A. No.

Now, where does this leave us? Ms. Lewinsky described a brief conversation in which the President mentioned the possibility that

an affidavit might enable her to avoid testifying if the need for it arose, and they left the subject. No discussion of content. No discussion of logistics. No discussion of timing. Virtually no discussion at all. And that very brief exchange is the heart of the case.

Now, the managers contend that because Ms. Lewinsky also recalls a reference to cover stories in that call, it is clear beyond doubt that the President instructed her to file a false affidavit.

But for at least two reasons, this claim fails also. First, Ms. Lewinsky repeatedly told Mr. Manager BRYANT that the mention of cover stories in that call was not connected to the mention of a possible affidavit—a position, I must note, that she had taken with the independent counsel for a very long time.

Second, Ms. Lewinsky has insisted for more than a year that the cover stories were not, in any event, false—a position she reasserted this week in explaining why an affidavit didn't necessarily have to be false.

Let's look quickly at Ms. Lewinsky's testimony, first, with respect to the alleged connection between cover stories and the affidavit.

[Text of videotape presentation:]

Q. Well, based on prior relations with the President, the concocted stories and those things like that, did this come to mind? Was there some discussion about that, or did it come to your mind about these stories—the cover stories?

A. Not in connection with the—not in connection with the affidavit.

* * * * *

Q. Did you discuss anything else that night in terms of—I would draw your attention to the cover stories. I have alluded to that earlier, but, uh, did you talk about cover story that night?

A. Yes, sir.

Q. And what was said?

A. Uh, I believe that, uh, the President said something—you can always say you were coming to see Betty or bringing me papers.

Q. I think you've testified that you're sure he said that that night. You are sure he said that that night?

A. Yes.

Q. Now, was that in connection with the affidavit?

A. I don't believe so, no.

Now, you have testified in the grand jury. I think your closing comments was that no one ever asked you to lie, but yet in that very conversation of December the 17th, 1997 when the President told you that you were on the witness list, he also suggested that you could sign an affidavit and use misleading cover stories. Isn't that correct?

A. Uh—well, I—I guess in my mind, I separate necessarily signing affidavit and using misleading cover stories. So, does—

Q. Well, those two—

A. Those three events occurred, but they don't—they weren't linked for me.

Again, the managers did not play these excerpts for you either. They don't want you to know Ms. Lewinsky's recollection, which is that the cover stories and the affidavit were not connected in that telephone call. And that is the call that is at the heart of that first obstruction charge.

The managers have suggested to you that Ms. Lewinsky for the first time this week offered responses, responses concerning the literal truth, for example, of the cover story designed to help the President. That was a suggestion a few days ago. Concerned then that the testimony might now undermine their case, they suddenly did an about-face and attacked her on Thursday.

Through these proceedings, the managers have consistently told you how credible a witness Ms. Lewinsky is and they have invoked

her immunity agreement as the reason that she must be honest, and today they again credit her testimony, but carefully, only in snippets, only when it suits their purposes. The responses Ms. Lewinsky provided about the cover story that were mentioned on Thursday by Mr. Manager BRYANT are not new; they are the same responses Ms. Lewinsky gave to the independent counsel. For example, when asked about the so-called cover story, Ms. Lewinsky testified as follows this week.

[Text of videotape presentation:]

Q. Would you agree that these cover stories that you've just testified to, if they were told to the attorneys for Paula Jones, that they would be misleading to them and not be the whole story, the whole truth?

A. They would—yes, I guess misleading. They were literally true, but they would be misleading, so incomplete.

The managers suggest that this testimony may be new, different, tinted, and tainted, I think they said on Thursday, but they don't tell you that Ms. Lewinsky said the very same things to the independent counsel. She did so repeatedly, and she did so—and this is key—before the President testified. She didn't know what he would say. He didn't know what she had said.

For example, Ms. Lewinsky referred to the two cover stories in her February 1998 proffer, more than a year ago. Remember, one such cover story concerned the reasons for visiting the President before she left the White House. That was to bring papers to him. And the other concerned her reasons for visiting the President after she left the White House, and that was to visit Betty Currie. Ms. Lewinsky was asked and said that neither of these statements was untrue and also that there was truth to both of these statements in her proffer a year ago.

She repeated this testimony in July to the independent counsel, telling an FBI agent that "these statements were not untrue but were misleading" and that "some facts were omitted from this statement." That is what she said this week.

The cover story testimony is consistent and is consistently exculpatory. Of course, it was easy for Mr. Manager BRYANT to stand before you on Thursday reminiscing about the open and forthcoming Ms. Lewinsky he had met during the informal interview. It was easy for Mr. Manager BRYANT to complain that the Ms. Lewinsky of the deposition was, I believe he said, not open to discussion or fully responsive to their inquiry. Let the questions and answers let you be the judge of that. It was easy for him to say that, because the House managers had refused Senator DASCHLE's request that they be allowed to make a transcript of the interview. That absence of a transcript allowed them this unverifiable fallback if their examination was disappointing: Oh, she changed on us. The truth is that she didn't tell the story that the managers wanted to hear. Remember those stubborn facts.

So we know that the managers are disappointed and want to blame their disappointment on Ms. Lewinsky. But when you get to the substance of today's presentation by the House managers, it shows that they have not in fact identified any significant area where Ms. Lewinsky's testimony on Monday differs from her earlier testimony in the grand jury. Her view of the cover story has been consistent from day 1.

Mr. Manager MCCOLLUM has also insisted that in the December 17 call it was clear both to the President and Ms. Lewinsky that the affidavit had to be false. As he put it—and I quote— "Can there be any doubt that the President was suggesting that they file an affidavit that contained lies and falsehoods that might keep her from ever having to testify in the Jones case, and give the President the kind of protection he needed when he testified?" Yes, there surely is doubt.

Ms. Lewinsky herself explains this week that she did not discuss the content of the affidavit with the President—we played those portions already and I will not again—but also that in her mind an affidavit presented a whole range of possibilities that were not necessarily false.

[Text of videotape presentation:]

Q. The night of the phone call, he's suggesting you could file an affidavit. Did you appreciate the implications of filing a false affidavit with the court?

A. I don't think I necessarily thought at that point it would have to be false, so, no, probably not. I don't—I don't remember having any thoughts like that, so I imagine I would remember something like that, and I don't, but—

Thus, as we have seen and heard, Ms. Lewinsky testified that there was no discussion of what would be in the affidavit and also that, to her thinking, the affidavit would not necessarily have been false.

Now that the December 17 call has fallen short, the managers have tried to transform the articles, as drafted, by asserting that the alleged obstruction occurred also on another date, January 5, in a call that took place then, even though the articles pin everything on December 17.

With respect to a January 5 call, Mr. Manager HUTCHINSON made the following claim to you. He asserted, and I quote:

Well, the record demonstrates that Monica Lewinsky's testimony is that she had a conversation with the President on the telephone in which she asked questions about the affidavit. She was concerned about signing that affidavit and according to Ms. Lewinsky, the President said, "Well, you could always say the people in legislative affairs got it for you or helped you get it."

This is still a quote:

And that is in reference to a paragraph in a particular affidavit.

Those were Mr. Manager HUTCHINSON's words. But the record unequivocally demonstrates that Ms. Lewinsky and the President did not ever discuss the content of that affidavit in this January 5 call or otherwise. And I challenge you to find any paragraph in Ms. Lewinsky's affidavit, either her draft or the final, reflecting this conversation. There isn't one. The call wasn't about the affidavit. He didn't tell her what to say in the affidavit. It is just not there.

In fact, Mr. Manager HUTCHINSON repeatedly represented to you that Ms. Lewinsky reviewed the content of her affidavit with the President. He had to say that because he is asking you to remove the President from office for getting her to file a false affidavit. That is a tough sell if they never talked about the content of the affidavit. That is why he told you, and I quote, "On January 6th"—5th or 6th—"she discussed that with the President, signing that affidavit, and the content of the affidavit."

That is why Mr. Manager HUTCHINSON also told you, "She went over the contents of that, even though she might not have had it in hand, with the President."

That is just not true. It is not true. To borrow a phrase, again: It is wanting to win too much. What is clear from Ms. Lewinsky's testimony is that she never went over the contents of the affidavit with the President, on January 5 or at any other time. Let's watch a brief excerpt about this matter.

[Text of videotape presentation:]

Q. Did—did the subject of the affidavit come up with the President?
A. Yes, towards the end of the conversation.
Q. And how did—tell us how that occurred.
A. I believe I asked him if he wanted to see a copy of it, and he said no.
Q. Well, I mean, how did you introduce that into the subject—into the conversation?
A. I don't really remember.
Q. Did he ask you, well, how's the affidavit coming or—
A. No, I don't think so.
Q. But you told him that you had one being prepared, or something?
A. I think I said—I think I said, you know, I'm going to sign an affidavit, or something like that.
Q. Did he ask you what are you going to say?
A. No.
Q. And this is the time when he said something about 15 other affidavits?
A. Correct.
Q. And tell us as best as you can recall what—how that—how that part of the conversation went.
A. I think that was the—sort of the other half of his sentence as, No, you know, I don't want to see it. I don't need to—or, I've seen 15 others.
It was a little flippant.
Q. In his answer to this proceeding in the Senate, he has indicated that he thought he had—might have had a way that he could have you—get you to file a—basically a true affidavit, but yet still skirt these issues enough that you wouldn't be called as a witness.
Did he offer you any of these suggestions at this time?
A. He didn't discuss the content of my affidavit with me at all, ever.

In fact, Ms. Lewinsky made clear she did not have any indication whatsoever that the President learned of the content of the affidavit from Mr. Jordan, either.

[Text of videotape presentation:]

Q. The fact that you assume that Mr. Jordan was in contact with the President—and I believe the evidence would support that through his own testimony that he had talked to the President about the signed affidavit and that he had kept the President updated on the subpoena issue and the job search—
A. Sir, I'm not sure that I knew he was having contact with the President about this. I—I think what I said was that I felt that it was getting his approval. It didn't necessarily mean that I felt he was going to get a direct approval from the President.

* * * * *

Q. Did you have any indication from Mr. Jordan that he—when he discussed the signed affidavit with the President, they were discussing some of the contents of the affidavit? Did you have—
A. Before I signed it or—
Q. No; during the drafting stage.
A. No, absolutely not—either/or. I didn't. No, I did not.

Finally, lacking any direct evidence of any kind that there was a discussion about the content of the affidavit, the managers have argued again and again that the President must have told Ms. Lewinsky to file a false affidavit because it was in his interest, not hers, to avoid her testifying in the Jones case. Mr. Manager BRY-

ANT argued to you at the start of these proceedings, "When everything is said and done, Ms. Lewinsky had no motivation, no reason whatsoever, to want to commit a crime by willfully submitting a false affidavit with a court of law. She really did not need to do this at that point in her life."

Mr. Manager BRYANT also argued that only the President would benefit from a false affidavit, so he must have instructed her to do it. As he put it, "Ms. Lewinsky files a false affidavit in the Jones case. What is the result of filing that false affidavit and who benefited from that?"

But he was wrong. He was wrong, as Ms. Lewinsky made very clear when Mr. Manager BRYANT asked her about this very subject this week. Let's listen to what she said:

[Text of videotape presentation:]

Q. But you didn't file the affidavit for your best interest, did you?
A. Uh, actually, I did.
Q. To avoid testifying.
A. Yes.

* * * * *

Q. Why—why didn't you want to testify? Why would not you—why would you have wanted to avoid testifying?
A. First of all, I thought it was nobody's business. Second of all, I didn't want to have anything to do with Paula Jones or her case. And—I guess those two reasons.

Ms. Lewinsky concedes that she had a reason to act on her own.

Now, we have been discussing subpart (1) of article II, the affidavit allegation. But this testimony also undermined subpart (2) of article II, which alleges that the President obstructed justice in that very same phone call by encouraging Ms. Lewinsky to lie in any testimony that she might give. Ms. Lewinsky previously denied that she and the President ever discussed the content of any deposition testimony in that conversation. That happened before this week. Indeed, she had told the FBI that she and the President never discussed what to say about her visits to the White House in the context of the Paula Jones case. And the managers themselves said, in a press release on January 19 of this year, that the President and Ms. Lewinsky "did not discuss the deposition that evening because Monica had not yet been subpoenaed."

So it is not entirely surprising that the managers did not ask Ms. Lewinsky to confirm that she and the President talked about the testimony in this call, even though that is where the obstruction allegedly occurred. They didn't ask her about that this week because they knew the answer. They knew the answer was "No." They knew there was no discussion about the content of her testimony during that call. And the testimony you have seen today confirms that answer resoundingly. There is no evidence to support the charge in subpart (2) either. The managers did not even try to elicit it.

The President did not obstruct justice. Ms. Lewinsky's testimony explodes these two claims arising out of the December 17 telephone call.

Now let's turn to the allegation in article II concerning gifts. Subpart (3) charges that:

On or about December 28, 1997, [the President] corruptly engaged in, encouraged, or supported a scheme to conceal evidence that had been subpoenaed in a Federal civil rights action brought against him.

Now, the managers have indicated to you that Ms. Lewinsky provided testimony useful to their case with respect to the President's involvement in the transfer of gifts to Ms. Currie. We must have attended a different deposition. In fact, Ms. Lewinsky's testimony provides powerful support for the position that Ms. Lewinsky decided on her own to keep from the Jones lawyers the gifts she had received from the President. It provides powerful support for the position that she had her own reasons and concerns for keeping the gifts from them. And it provides powerful support for the position that she never discussed either the topic of gifts or her own reasons for concern with the President before making her own independent decision on how to handle the gifts.

Perhaps most notably, her testimony also provides corroboration for the President's testimony that he told her she had to turn over to the Jones lawyers what gifts she had. That is new evidence. But it undermines the managers' case, it doesn't help it.

In one of the most extraordinary points in the deposition—and we will get to this in a moment—we learned that the Office of Independent Counsel failed to disclose to the House, to the Senate, to the President, Ms. Lewinsky's exculpatory statement on this point.

Since the OIC evidently had chosen not to share the information with us, with the House or with this body, we owe the managers a small debt of gratitude for allowing us to learn of it here.

Now let's look at the record with respect to the phone calls giving rise to the gift pickup. The managers repeatedly asserted at the outset that they could prove Ms. Currie called Ms. Lewinsky and not the other way around. They claimed they had found a cell phone record documenting that initial call to arrange to pick up the gifts. As Mr. Manager HUTCHINSON said tantalizingly at the start of these proceedings:

Well, it was not known at the time of the questioning of Monica Lewinsky, but since then, the cell phone record was retrieved. And you don't have it in front of you, but it will be available. The cell phone record was retrieved that showed on Betty Currie's cell phone calls that a call was made at 3:32 p.m. from Betty Currie to Monica Lewinsky and—

Still under quotes—

this confirms the testimony of Monica Lewinsky that the followup to get the gifts came from Betty Currie.

That is what Mr. Manager HUTCHINSON promised the record would show. But that is not, in the end, what the record now shows. There is no evidence that the cell phone call initiated the process, as the managers claimed, and since there is no evidence that that call from Ms. Currie was the call initiating the process, there is no documentary evidence that Ms. Currie initiated the process. It is that simple. The proof has failed.

What the record does show is that there was a cell phone call that day, a proposition that no one has ever disputed. Ms. Lewinsky testified to the managers that she recalls a cell phone call that day. Let's look at the testimony. This passage that you are about to see addresses the calls between Ms. Lewinsky and Ms.

Currie on December 28. Ms. Lewinsky has just described Ms. Currie's call to her about picking something up, and this is what follows.

[Text of videotape presentation:]

Q. Did—did you have other telephone calls with her that day?
A. Yes.
Q. Okay. What was the purpose of those conversations?
A. I believe I spoke with her a little later to find out when she was coming, and I think that I might have spoken with her again when she was either leaving her house or outside or right there, to let me know to come out.
Q. Do—at that time, did you have the caller identification—
A. Yes, I did.
Q. —on your telephone?
A. Yes.
Q. And did you at least on one occasion see her cell phone number on your caller-ID that day?
A. Yes, I did.

Nowhere does Ms. Lewinsky say which call was the cell phone call. In fact, if anything, it is logical to assume that it is the call from Ms. Currie announcing her imminent arrival which, of course, says nothing about how the visit was initially planned, and no one ever has disputed that Ms. Currie picked up the box. The fact that she might have called to say, "I'm downstairs now," is of no additional evidentiary value whatsoever.

Left without a documentary record, the managers assert that there is new testimonial evidence of other calls on December 28 that somehow corroborate their theory of the case. But the new testimony doesn't even establish who made the other calls that day, and the record already had evidence of other calls on that day. Ms. Lewinsky mentioned such calls to the grand jury. Ms. Lewinsky and Ms. Currie spoke often, especially in that time period. There were phone calls.

There is nothing new here. Ms. Currie has one recollection; Ms. Lewinsky has a different recollection. Indeed, when asked by Mr. Manager BRYANT whether there was any doubt in her mind that it was Betty Currie who called her, Ms. Lewinsky stated simply, "That's how I remember this event."

Straining for something beyond this absolutely unresolvable conflict, the managers promised evidence to tip the balance, and they produced none. The much-touted cell phone call utterly fails to establish who initiated the gift pickup by Ms. Currie.

It is, therefore, clear that the deposition testimony does not advance the managers' case with respect to the gifts, but it sure advances the defense case. Remember, Ms. Lewinsky received a subpoena on December 19 requesting gifts she had received from the President. She met with her lawyer, Frank Carter, on December 22, and she did not speak to the President in the interim.

In her deposition this week, Ms. Lewinsky testified at some length about how she decided what to bring her attorney, Frank Carter, in response to that request for gifts. As we will see, she decided on her own that she would bring only innocuous things to produce, things that any intern might have in his or her possession.

Again, this was on December 22, well before the December 28 meeting with the President at which the managers and the articles

say the plan to hide the gifts was hatched. Ms. Lewinsky explained to the managers what she did and why she did it. Let's listen.

[Text of videotape presentation:]

Q. Did, uh, did you bring with you to the meeting with Mr. Jordan, and for the purpose of carrying it, I guess, to Mr. Carter, items in response to this request for production?

A. Yes.

Q. Did you discuss those items with Mr. Jordan?

A. I think I showed them to him, but I'm not 100 percent sure. If I've testified that I did, then I'd stand by that.

Q. Okay. How did you select those items?

A. Uh, actually, kind of in an obnoxious way, I guess. I—I felt that it was important to take the stand with Mr. Carter and then, I guess, to the Jones people that this was ridiculous, that they were—they were looking at the wrong person to be involved in this. And, in fact, that was true. I know and knew nothing of sexual harassment. So I think I brought the, uh, Christmas cards, that I'm sure everyone in this room has probably gotten from the President and First Lady, and considered that correspondence, and some innocuous pictures and—they were innocuous.

Q. Were they the kind of items that typically, an intern would receive or, like you said, any one of us might receive?

A. I think so.

Q. In other words, it wouldn't give away any kind of special relationship?

A. Exactly.

Q. And was that your intent?

A. Yes.

Q. Did you discuss how you selected those items with anybody?

A. I don't believe so.

Q. Did Mr. Jordan make any comment about those items?

A. No.

Q. Were any of these items eventually turned over to Mr. Carter?

A. Yes.

As an aside, contrary to the assertion of Mr. Manager ROGAN, it is also clear from that excerpt that Ms. Lewinsky knew nothing of sexual harassment. That is what she said.

So it is clear from this tape that well before December 28 Ms. Lewinsky had made her own decision for her own reasons not to produce the gifts. She remained firm in this decision for her own reasons on December 28 when the President gave her more gifts. Let's watch again.

[Text of videotape presentation:]

Q. Okay. Did—he gave you some gifts that day, and my question to you is what went through your mind when he did that, when you knew all along that you had just received a subpoena to produce gifts. Did that not concern you?

A. No, it didn't. I was happy to get them.

Q. All right. Why did it—beyond your happiness in receiving them, why did the subpoena aspect of it not concern you?

A. I think at that moment—I mean, you asked me when he gave me those gifts. So, at that moment, when I was there, I was happy to be with him. I was happy to get these Christmas presents. So I was nervous about the case, but I had made a decision that I wasn't going to get into it too much—

Q. Well—

A. —with a discussion.

Q. —have you in regards to that—you've testified in the past that from everything that the President had told you about things like this, there was never any question that you were going to keep everything quiet, and turning over all the gifts would prompt the Jones attorneys to question you. So you had no doubt in your mind, did you not, that you weren't going to turn these gifts over that he had just given you?

A. Uh, I—I think the latter half of your statement is correct. I don't know if you're reading from my direct testimony, but—because you said—your first statement was from everything the President had told you. So I don't know if that was—if those were my words or not, but I—no, I was—I—it—I was concerned about the gifts. I was worried someone might break into my house or concerned that they actually

existed, but I wasn't concerned about turning them over because I knew I wasn't going to, for the reason that you stated.

Now, when Ms. Lewinsky raised the issue of gifts with the President on December 28, she did not state he even answered. Her recollection of whether he said anything has been murky, as we have heard discussed here. And in her recent deposition she declined to resolve the inconsistencies in favor of the version the managers have advanced.

And then what happened after she left on December 28? As Ms. Lewinsky recounted the subsequent events, Ms. Currie later called and arranged to pick up something. But what? According to Ms. Lewinsky, Ms. Currie never said "gifts" when she called. Ms. Lewinsky assumed that was what she was calling about—that is her testimony—no doubt because they had been on her mind for the reasons we have just heard explained.

Now, the managers attempt to respond to all this by saying over and over, yes, but the President never told Ms. Lewinsky she had to produce the gifts he had given her. They attempt to convert his silence into a failure to perform a legal duty and then to convert that failure to perform a legal duty into a high crime.

But are we really sure that he didn't tell her to produce the gifts? Remember, the President volunteered on his own in the grand jury that Ms. Lewinsky had raised the subject of gifts with him. That was long before he knew she had said it. And remember, he said what his response was: "You have to give them whatever you have."

Now, the managers would have you believe Ms. Lewinsky rejected that recollection wholesale, that she said he never said any such thing. They need that to be the case. But it is not so, we now learn, no thanks to Mr. Starr's agents.

Let's watch.

[Text of videotape presentation:]

Q. Okay. Now, were you ever under the impression from anything that the President said that you should turn over all the gifts to the Jones lawyers?

A. No, but where this is a little tricky—and I think I might have even mentioned this last weekend—was that I had an occasion in an interview with one of the—with the OIC—where I was asked a series of statements, if the President had made those, and there was one statement that Agent Phalen said to me—I—there were—other people, they asked me these statements—this is after the President testified and they asked me some statements, did you say this, did you say this, and I said, no, no, no. And Agent Phalen said something, and I think it was, "Well, you have to turn over whatever you have." And I said to you, "You know, that sounds a little bit familiar to me."

So that's what I can tell you on that.

Q. That's in the 302 exam?

A. I don't know if it's in the 302 or not, but that's what happened.

Q. Uh-huh.

This is extraordinary testimony. Why? Because Ms. Lewinsky apparently corroborated the President. She recognized those words when she heard them. She didn't refute the President. And the OIC never told us that that was what she said. Never told the House. Never told this body. We had no idea about Ms. Lewinsky's recollection until we heard her testimony. We can only wonder—in troubled disbelief—how much more we still don't know. The President did not obstruct justice. Ms. Lewinsky's testimony seriously undermines the gift claim that is before you.

We have reviewed the first three subparts of article II. Now, let's look quickly at the fourth.

Ms. Lewinsky's testimony also confirms what has been clear throughout these proceedings: That her New York job search efforts began in October 1997, well before Ms. Lewinsky was ever named a potential witness in the Jones case; and that Mr. Jordan first became involved in the job search effort in November, early November, also before she became a witness; that Ms. Lewinsky had received a job offer in New York from the United Nations in November also, and also well before there was any indication she would be a witness; and that Mr. Jordan and Ms. Lewinsky had several contacts related to her job search in November, despite the fact that both of them were traveling extensively, including out of the country in that period.

In fact, Ms. Lewinsky makes it clear in this testimony that she and Mr. Jordan began arranging the meeting that took place on December 11 before Thanksgiving, before anyone knew Ms. Lewinsky's name would be on a witness list—all of this, of course, before anyone knew Ms. Lewinsky's name would be on a witness list. If the fact that the assistance to Ms. Lewinsky preceded her appearance on the witness list needed confirmation, it has been confirmed again.

But there is more. What has also been confirmed is Ms. Lewinsky's grand jury testimony that, "No one ever asked me to lie. And I was never promised a job for my silence." We have repeatedly reminded this body of these plain and simple words with their plain, simple and exculpatory meaning.

The House managers repeatedly have tried to suggest that these words must mean something else. But at no time in their hours of questioning Ms. Lewinsky did they question her about this pivotal assertion regarding the job search allegation. They did not ask her to explain it, to amend it, to qualify it. They did not challenge it. They did not confront it. They didn't dare. They knew the answer. They knew there was no quid pro quo. And their failure to elicit a response speaks volumes.

The President did not obstruct justice. Ms. Lewinsky's testimony undermines this job search claim, as well. Plain and simple, the evidence is to the contrary.

Now, Mr. Manager BRYANT remarked on Thursday that after deposing Ms. Lewinsky he felt like the actor Charles Laughton in the film "Witness for the Prosecution." As counsel for the President, I would respectfully submit that another famous role of Charles Laughton might be the more fitting reference. It is that of the dogged, tireless, obsessed Inspector Javert once played by Mr. Laughton in the 1935 movie version of "Les Miserables."

The most recent testimony of Ms. Lewinsky has seriously damaged the managers' case and has confirmed that it is time for this tireless pursuit of the President to come to an end.

I turn now to my partner, Mr. Kendall, who will discuss Mr. Jordan's recent testimony.

The CHIEF JUSTICE. The Chair recognizes the majority leader.

RECESS

Mr. LOTT. I think I see in the Chief Justice's eyes the desire for——

[Laughter.]

Mr. LOTT. —a 15-minute break. Let's return as shortly after 3:30 as is possible.

Thereupon, at 3:18 p.m., the Senate recessed until 3:42 p.m.; whereupon, the Senate reassembled when called to order by the Chief Justice.

The CHIEF JUSTICE. The Chair recognizes the majority leader.

Mr. LOTT. Thank you, Mr. Chief Justice. I believe the White House counsel has an additional presenter at this time.

The CHIEF JUSTICE. The Chair recognizes White House Counsel Kendall.

Mr. Counsel KENDALL. Mr. Chief Justice, ladies and gentlemen of the Senate, distinguished House Managers, I am going to deal with Vernon Jordan's videotape deposition. That deposition was taken on February 2, this last Tuesday, and it produced nothing at all which was significant and new. Time and again, Mr. Manager HUTCHINSON cited Mr. Jordan's previous grand jury testimony, and time and again Mr. Jordan confirmed and recited his previous grand jury testimony.

The managers had a full and fair opportunity to take Mr. Jordan's testimony, and they, indeed, had time to spare. They used just about 3 hours of their allotted 4-hour time. And they discovered nothing that was not contained in the previous 900 pages of Mr. Jordan's grand jury testimony which has been taken in his March 3, March 5, May 5, May 28, and June 9 appearances before the OIC grand jury. Assertions by counsel is not the same thing as proof. And I think that it is clear when you watch the actual video as we have done today of the three witnesses whose testimony the managers took earlier this week.

For example, with respect to Mr. Jordan, Mr. Manager HUTCHINSON, who did a first-rate job of interrogation as you can see from the video, told you last Thursday that he needed to have in evidence the videotape, and you admitted it into evidence, because—and I quote—"Mr. Jordan's testimony goes to the connection between the job search, the benefit provided to a witness, and the solicited false testimony from that witness."

Mr. Manager HUTCHINSON also asserted more than once last Thursday that Mr. Jordan's testimony will prove that the President was controlling the job search. There is only one problem with these assertions. When you actually look at the videotape and listen to what Mr. Jordan testified to, there is no support for these propositions. There is no direct evidence and there is no circumstantial evidence. It is plain that to help somebody find a job is an acceptable activity. It is only when this is tied, as the second article of impeachment alleges it is tied, to some obstruction in the Paula Jones case that it becomes illegal. And, when fairly considered, Mr. Jordan's testimony provides no evidence whatsoever of that.

Mr. Jordan was a long-time and close personal friend of the President.

[Text of videotape presentation:]

Q. It's probably not bad from Washington standards.

Would you describe the nature of your relationship with President Clinton?

A. President Clinton has been a friend of mine since approximately 1973, when I came to your State, Arkansas, to make a speech as president of the National Urban League about race and equal opportunity in our Nation, and we met then and there, and our friendship has grown and developed and matured and he is my friend and will continue to be my friend.

Q. And just to further elaborate on that friendship, it's my understanding that he and his—and the First Lady has had Christmas Eve dinner with you and your family for a number of years?

A. Every year since his Presidency, the Jordan family has been privileged to entertain the Clinton family on Christmas Eve.

Q. And has there been any exceptions in recent years to that?

A. Every year that he has been President, he has had, he and his family, Christmas Eve with my family.

Q. And have you vacationed together with the Clinton family?

A. Yes. I think you have seen reels of playing golf and having fun at Martha's Vineyard.

Q. And so you vacation together, you play golf together on a semi-regular basis?

A. Whenever we can.

It has been, since the start of this investigation, well known that Mr. Jordan was active in helping Ms. Lewinsky secure employment in New York, and also that he construed this request which came to him through Betty Currie as having come from the President himself. In his May 28 grand jury testimony, for example, Mr. Jordan testified that Betty Currie is the President's secretary. "She was the person who called me at the behest of the President, I believe, to ask me to look into getting Monica Lewinsky the job."

And, again, on June 9, Mr. Jordan testified to the grand jury that, "The President asked me to help get Monica Lewinsky a job."

Mr. Manager HUTCHINSON played an excerpt, which I will not play again, which once more repeats that testimony.

Mr. Jordan, however, made clear that while he recommended Ms. Lewinsky for a job at three New York firms which he had some connection with, the decision to hire her was the company's, and he put no pressure of any kind on these companies to hire Ms. Lewinsky. Indeed, she received an offer at one company, Revlon, and failed to obtain one from American Express or Burson-Marsteller.

[Text of videotape presentation:]

Q. Okay. Do you believe that you are acting in the company's interest or the President's interest when you were trying to secure a job for Ms. Lewinsky?

A. Well, what I knew was that the company would take care of its own interest. This is not the first time that I referred somebody, and what I know is, is that if a person being referred does not meet the standards required for that company, I have no question but that that person will not be hired. And so the referral is an easy thing to do; the judgment about employment is not a judgment as a person referring that I make. But I do have confidence in all of the companies on whose boards I sit that, regardless of my reference, that as to their needs and as to their expectations for their employees that they will make the right decisions, as happened in the American Express situation.

American Express called and said: We will not hire Ms. Lewinsky. I did not question it, I did not challenge it, because they understood their needs and their needs in comparison to her qualifications. They made a judgment. Revlon, on the other hand, made another judgment.

I am not the employer. I am the referrer, and there is a major difference.

Q. Now, going back to what you knew as far as information and what you conveyed to Revlon, you indicated that you did not tell Mr. Halperin that you were making this request or referral at the request of the President of the United States.

A. Yes, and I didn't see any need to do that.

Q. And then, when you talked to Mr.—

A. Nor do I believe not saying that, Counselor, was a breach of some fiduciary relationship.

Q. And when you had your conversation with Mr. Perelman—

A. Right.

Q. —at a later time—

A. Right.

Q. —you do not remember whether you told him—you do not believe you told him you were calling for the President—

A. I believe that I did not tell him.

Q. —but you assumed that he knew?

A. No. I did not make any assumptions, let me say. I said: Ronald, here is a young lady who has been interviewed. She thinks the interview has not gone well. See what you can do to make sure that she is properly interviewed and evaluated—in essence.

Q. And did you reference her as a former White House intern?

A. Probably. I do not have a recollection of whether I described her as a White House intern, whether I described her as a person who had worked for the Pentagon. I said this is a person that I have referred.

I think, Mr. HUTCHINSON, that I have sufficient, uh, influence, shall we say, sufficient character, shall we say, that people have been throughout my career able to take my word at face value.

Q. And so you didn't need to reference the President. The fact that you were calling Mr. Perelman—

A. That was sufficient.

Q. —and asking for a second interview for Ms. Lewinsky, that that should be sufficient?

A. I thought it was sufficient, and obviously, Mr. Perelman thought it was sufficient.

Q. And so there is no reason, based on what you told him, for him to think that you were calling at the request of the President of the United States?

A. I think that's about right.

Q. And so, at least with the conversation with Mr. Halperin and Mr. Perelman, you did not reference that you were acting in behalf of the President of the United States. Was there anyone else that you talked to at Revlon in which they might have acquired that information?

A. The only persons that I talked to in this process, as I explained to you, was Mr. Halperin and Mr. Perelman about this process. And it was Mr. Halperin who put the—who got the process started.

Q. So those are the only two you talked about, and you made no reference that you were acting in behalf of the President?

A. Right.

Q. Now, the second piece of information was the fact that you knew and the President knew that Ms. Lewinsky was under subpoena in the Jones case, and that information was not provided to either Mr. Halperin or to Mr. Perelman; is that correct?

A. That's correct.

The most critical thing about this deposition is it contained no evidence of any kind which supports the central allegation of article II, the obstruction of justice article, that Mr. Jordan's job search assistance was tied to Ms. Lewinsky testifying in a certain way or that the President intended Mr. Jordan's assistance to corruptly influence her testimony. Mr. Jordan was unequivocal about the fact that he had frequently helped other people and that here there was no quid pro quo, no tie-in of any kind. Indeed, he provided direct evidence of this fact.

[Text of videotape presentation:]

Q. Mr. Jordan, you were asked questions about job assistance. Would you describe the job assistance you have over your career given to people who have come to you requesting help finding a job or finding employment?

A. Well, I've known about job assistance and have for a very long time. I learned about it dramatically when I finished at Howard University Law School, 1960, to return home to Atlanta, Georgia to look for work. In the process of my—during my senior year, it was very clear to me that no law firm in Atlanta would hire me. It was very clear to me that, uh, I could not get a job as a black lawyer in the city

government, the county government, the State government or the Federal Government.

And thanks to my high school bandmaster, Mr. Kenneth Days, who called his fraternity brother, Donald L. Hollowell, a civil rights lawyer, and said, "That Jordan boy is a fine boy, and you ought to consider him for a job at your law firm," that's when I learned about job referral, and that job referral by Kenneth Days, now going to Don Hollowell, got me a job as a civil rights lawyer working for Don Hollowell for $35 a week.

I have never forgotten Kenneth Days' generosity. And given the fact that all of the other doors for employment as a black lawyer graduating from Howard University were open to me, that's always—that's always been etched in my heart and my mind, and as a result, because I stand on Mr. Days' shoulders and Don Hollowell's shoulders, I felt some responsibility to the extent that I could be helpful or got in a position to be helpful, that I would do that.

And there is I think ample evidence, both in the media and by individuals across this country, that at such times that I have been presented with that opportunity that I have taken advantage of that opportunity, and I think that I have been successful at it.

Q. Was your assistance to Ms. Lewinsky which you have described in any way dependent upon her doing anything whatsoever in the Paula Jones case?

A. No.

That is direct evidence. That is not circumstantial evidence. That is unimpugned direct evidence.

Mr. Manager HUTCHINSON emphasized that Mr. Jordan now admits that he met with Ms. Lewinsky for breakfast on December 31. But Mr. Jordan also conceded in his deposition that, while he has no direct recollection of it, he also met with Ms. Lewinsky on November 5, a date well before any of the many managerial-selected dates for the beginning of the corrupt conspiracy here.

[Text of videotape presentation:]

Q. . . . Now, when was the first time that you recall that you met with Monica Lewinsky?

A. If you've read my grand jury testimony—

Q. I have.

A. —and I'm sure that you have—there is testimony in the grand jury that she came to see me on or about the 5th of November. I have no recollection of that. It was not on my calendar, and I just have no recollection of her visit. There is a letter here that you have in evidence, and I have to assume that in fact that happened. But as I said in my grand jury testimony, I'm not aware of it, I don't remember it—but I do not deny that it happened.

Q. And Ms. Lewinsky has made reference to a meeting that occurred in your office on November 5, and that's the meeting that you have no recollection of?

A. That is correct. We have no record of it in my office, and I just have no recollection of it.

Q. And in your first grand jury appearance, you were firm, shall I say, that the first time you met with Ms. Lewinsky, that it was on December 11th?

A. Yes. It was firm based on what my calendar told me, and subsequently to that, there has been a refreshing of my recollection, and I do not deny that it happened. By the same token, I will tell you, as I said in my grand jury testimony, that I did not remember that I had met with her.

Q. And in fact today, the fact that you do not dispute that that meeting occurred is not based upon your recollection but is simply based upon you've seen the records, and it appears that that meeting occurred?

A. That is correct.

The managers' theory is that it wasn't the original job assistance which constitutes obstruction of justice, it was, rather, the intensification of it which began at a certain point—and that point has varied.

When you boil it all down, when you look at Mr. Jordan's deposition or read his grand jury testimony, you see that he acted for Ms. Lewinsky on two different occasions. On December 11 he made three phone calls for her to New York firms, and then on January

8, when she thought an interview had gone badly, he made another phone call, this time to Mr. Perelman. That is all he did.

Now, you also will recall, I think, that the managers' original theory was that what catalyzed this job search intensification, what really kick-started it, was the entry of an order in the Paula Jones case by Judge Wright on December 11.

Mr. Manager HUTCHINSON told you on January 14 what that triggered:

> Let's look at the chain of events. The judge—the witness list came in, the judge's order came in, that triggered the President into action and the President triggered Vernon Jordan into action. That chain reaction here is what moved the job search along. . . . Remember what else happened on that day, December 11. Again, that was the same day that Judge Wright ruled that the questions about other relationships could be asked by the Jones attorneys.

That was the theory then. This is now. We demonstrated, in our own presentation, of course, that that order was entered late in the day at a time when Mr. Jordan was high over the Atlantic in an airplane on his way to Amsterdam.

Mr. Manager HUTCHINSON's very able examination did not try to resuscitate that theory. He didn't even make the attempt. He didn't ask Mr. Jordan about the December 11 order.

So today we have a different time line. We have a new chart and a new time line. Let's look at this.

This is Mr. Manager HUTCHINSON's chart this morning. What is critical here? Well, we learned today that it is the December 5 date that is critical. That is when the witness list was faxed to the President's counsel, and that is what triggered the succeeding chain of events. Mr. Manager HUTCHINSON remarked, if I heard him correctly, that whenever you are talking about obstruction of justice, it ties together, it all fits together.

Let's look at his chart. We see that December 11 is on here, but Judge Wright's order has dropped off entirely, unless it is there where I don't see it. Judge Wright's order is now not part of the chain of causation.

We look at December 7. We ask ourselves what happened then; this is 2 days after the witness list came in. It must have been something nefarious, because the President and Jordan meet. But Mr. Manager HUTCHINSON did not represent to you that they even talked about the Jones litigation or Ms. Lewinsky because they didn't. The managers told you that in their trial brief, and it has been Mr. Jordan's consistent testimony.

On December 11, Mr. Jordan did have a meeting with Ms. Lewinsky. That was originally set up not on December 8, you will recall, but back in November when Ms. Lewinsky had agreed to call Mr. Jordan when he returned from his travel.

So the chronology here produces no even circumstantial evidence of some linkage between the Paula Jones case and Mr. Jordan's job search.

It is also significant, I think, while the witness list came in on December 5, the President met with his lawyers on December 6, the President doesn't call Ms. Lewinsky until December 17 and Mr. Jordan doesn't learn about the fact that Ms. Lewinsky is on the witness list until December 19. There does not seem to be a lot of urgency here.

Let's review the nefarious conspiracy that we have heard about today to get Ms. Lewinsky a job. We are told today that Vernon Jordan had no corrupt intent, that Ms. Lewinsky had no corrupt intent, and that Revlon had no corrupt intent. Rather, it was the President who somehow spun out this conspiracy. But I ask you, where, in all of the voluminous record, is there any evidence, either direct or circumstantial, that the President somehow tied these things together through Mr. Jordan? It is a shell game, but the game doesn't have any shell in it, and I think this is the loneliest conspiracy in human history, if it was a conspiracy. But it wasn't.

On the subject of quid pro quo, I want to play two excerpts, and part of these I ask your indulgence. They were played in part by Mr. Manager HUTCHINSON, but I think they deserve to be seen in their full context. In one of them you are going to hear Mr. Jordan say that he was running the job search, he was in control of the job search. I think that is true about the Vernon Jordan job search. Ms. Lewinsky's job search had also been proceeding with Mr. Richardson—Mr. Jordan was not involved in any way with that—and through her superior at the Pentagon, Mr. Ken Bacon. Let's listen to the full context and listen for any evidence of a quid pro quo.

[Text of videotape presentation:]

BY MR. HUTCHINSON:

Q. Mr. Jordan, let me go back to that meeting on December 11th. I believe we were discussing that. My question would be: How did the meeting on December 11 of 1997 with Ms. Lewinsky come about?

A. Ms. Lewinsky called my office and asked if she could come to see me.

Q. And was that preceded by a call from Betty Currie?

A. At some point in time, Betty Currie had called me, and Ms. Lewinsky followed up on that call, and she came to my office, and we had a visit.

Q. Ms. Lewinsky called, set up a meeting, and at some point sent you a resume, I believe.

A. I believe so.

Q. And did you receive that prior to the meeting on December 11th?

A. I—I have to assume that I did, but I—I do not know whether she brought it with her or whether—it was at some point that she brought with her or sent to me—somehow it came into my possession—a list of various companies in New York with which she had—which were her preferences, by the way—most of which I did not know well enough to make any calls for.

Q. All right. And I want to come back to that, but I believe—would you dispute if the record shows that you received the resume of Ms. Lewinsky on December 8th?

A. I would not.

Q. And presumably, the meeting on December 11th was set up somewhere around December 8th by the call from Ms. Lewinsky?

A. I—I would not dispute that, sir.

Q. All right. Now, you mentioned that she had sent you a—I guess some people refer to it—a wish list, or a list of jobs that she—

A. Not jobs—companies.

Q. —companies that she would be interested in seeking employment with.

A. That's correct.

Q. And you looked at that, and you determined that you wanted to go with your own list of friends and companies that you had better contacts with.

A. I'm sure, Congressman, that you too have been in this business, and you do know that you can only call people that you know or feel comfortable in calling.

Q. Absolutely. No question about it. And let me just comment and ask your response to this, but many times I will be listed as a reference, and they can take that to any company. You might be listed as a reference and the name "Vernon Jordan" would be a good reference anywhere, would it not?

A. I would hope so.

Q. And so, even though it was a company that you might not have the best contact with, you could have been helpful in that regard?

A. Well, the fact is I was running the job search, not Ms. Lewinsky, and therefore, the companies that she brought or listed were not of interest to me. I knew where I would need to call.

Q. And that is exactly the point, that you looked at getting Ms. Lewinsky a job as an assignment rather than just something that you were going to be a reference for.

A. I don't know whether I looked upon it as an assignment. Getting jobs for people is not unusual for me, so I don't view it as an assignment. I just view it as something that is part of what I do.

Q. You're acting in behalf of the President when you are trying to get Ms. Lewinsky a job, and you were in control of the job search?

A. Yes.

Q. Now, going back—going to your meeting that we're talking about on December 11th, prior to the meeting did you make any calls to prospective employers in behalf of Ms. Lewinsky?

A. I don't think so. I think not. I think I wanted to see her before I made any calls.

Q. And so if they were not before, after you met with her, you made some calls on December 11th?

A. I—I believe that's correct.

Q. And you called Mr. Richard Halperin of McAndrews & Forbes?

A. That's right.

Q. You called Mr. Peter—

A. Georgescu.

Q. —Georgescu. And he is with what company?

A. He is chairman and chief executive officer of Young & Rubicam, a leading advertising agency on Madison Avenue.

Q. And did you make one other call?

A. Yes. I called Ursie Fairbairn, who runs Human Resources at American Express, at the American Express Company, where I am the senior director.

* * * * *

Q. And what did you basically communicate to each of these officials in behalf of Ms. Lewinsky?

A. I essentially said that you're going to hear from Ms. Lewinsky, and I hope that you will afford her an opportunity to come in and be interviewed and look favorably upon her if she meets your qualifications and your needs for work.

Q. Okay. And at what level did you try to communicate this information?

A. By—what do you mean by "what level"?

Q. In the company that you were calling, did you call the chairman of human resources, did you call the CEO—who did you call, or what level were you seeking to talk to?

A. Richard Halperin is sort of the utility man; he does everything at McAndrews & Forbes. He is very close to the chairman, he is very close to Mr. Gittis. And so at McAndrews & Forbes, I called Halperin.

As I said to you, and as my grand jury testimony shows, I called Young & Rubicam, Peter Georgescu as its chairman and CEO. I have had a long-term relationship with Young & Rubicam going back to three of its CEOs, the first being Edward Ney, who was chairman of Young & Rubicam when I was head of the United Negro College Fund, and it was during that time that we developed the great theme, "A mind is a terrible thing to waste." So I have had a long-term relationship with Young & Rubicam and with Peter Georgescu, so I called the chairman in that instance.

At American Express, I called Ms. Ursie Fairbairn who is, as I said before, in charge of Human Resources.

So that is the level—in one instance, the chairman; in one instance a utilitarian person; and in another instance, the head of the Human Resources Department.

Q. And the utilitarian connection, Mr. Richard Halperin, was sort of an assistant to Mr. Ron Perelman?

A. That's correct. He's a lawyer.

Q. Now, going to your meeting on December 11th with Ms. Lewinsky, about how long of a meeting was that?

A. I don't—I don't remember. You have a record of it, Congressman.

Q. And actually, I think you've testified it was about 15 to 20 minutes, but don't hold me to that, either.

During the course of the meeting with Ms. Lewinsky, what did you learn about her?

A. Uh, enthusiastic, quite taken with herself and her experience, uh, bubbly, effervescent, bouncy, confident, uh—actually, I sort of had the same impression that you House Managers had of her when you met with her. You came out and said she was impressive, and so we come out about the same place.

Q. And did she relate to you the fact that she liked being an intern because it put her close to the President?

A. I have never seen a White House intern who did not like being a White House intern, and so her enthusiasm for being a White House intern was about like the enthusiasm of White House interns—they liked it.

She was not happy about not being there anymore—she did not like being at the Defense Department—and I think she actually had some desire to go back. But when she actually talked to me, she wanted to go to New York for a job in the private sector, and she thought that I could be helpful in that process.

Q. Did she make reference to someone in the White House being uncomfortable when she was an intern, and she thought that people did not want her there?

A. She felt unwanted—there is no question about that. As to who did not want her there and why they did not want her there, that was not my business.

Q. And she related that—

A. She talked about it.

Q. —experience or feeling to you?

A. Yes.

Q. Now, your meeting with Ms. Lewinsky was on December 11th, and I believe that Ms. Lewinsky has testified that she met with the President on December 5—excuse me, on December 6—at the White House and complained that her job search was not going anywhere, and the President then talked to Mr. Jordan.

Do you recall the President talking to you about that after that meeting?

A. I do not have a specific recollection of the President saying to me anything about having met with Ms. Lewinsky. The President has never told me that he met with Ms. Lewinsky, as best as I can recollect. I—I am aware that she was in a state of anxiety about going to work. She was in a state of anxiety in addition because her lease at Watergate, at the Watergate, was to expire December 31st. And there was a part of Ms. Lewinsky, I think, that thought that because she was coming to me, that she could come today and that she would have a job tomorrow. That is not an unusual misapprehension, and it's not limited to White House interns.

Q. I mentioned her meeting with the President on the same day, December 6th. I believe the record shows the President met with his lawyers and learned that Ms. Lewinsky was on the Jones witness list. Now, did you subsequently meet with the President on the next day, December 7th?

A. I may have met with the President. I'd have to—I mean, I'd have to look. I'd have to look. I don't know whether I did or not.

Q. If you would like to confer—I believe the record shows that, but I'd like to establish that through your testimony.

MS. WALDEN: Yes.

THE WITNESS: Yes.

BY MR. HUTCHINSON:

Q. All right. So you met with the President on December 7th. And was it the next day after that, December 8th, that Ms. Lewinsky called to set up the job meeting with you on December 11th?

A. I believe that is correct.

Q. And sometime after your meeting on December 11th with Ms. Lewinsky, did you have another conversation with the President?

A. Uh, you do understand that conversations between me and the President, uh, was not an unusual circumstance.

Q. And I understand that—

A. All right.

Q. —and so let me be more specific. I believe your previous testimony has been that sometime after the 11th, you spoke with the President about Ms. Lewinsky.

A. I stand on that testimony.

Q. All right. And so there's two conversations after the witness list came out—one that you had with the President on December 7th, and then a subsequent conversation with him after you met with Ms. Lewinsky on the 11th.

Now, in your subsequent conversation after the 11th, did you discuss with the President of the United States Monica Lewinsky, and if so, can you tell us what that discussion was?

A. If there was a discussion subsequent to Monica Lewinsky's visit to me on December the 11th with the President of the United States, it was about the job search.

Q. All right. And during that, did he indicate that he knew about the fact that she had lost her job in the White House, and she wanted to get a job in New York?

A. He was aware that—he was obviously aware that she had lost her job in the White House, because she was working at the Pentagon. He was also aware that she wanted to work in New York, in the private sector, and understood that that is why she was having conversations with me. There is no doubt about that.

Q. And he thanked you for helping her?

A. There's no question about that, either.

Q. And on either of these conversations that I've referenced that you had with the President after the witness list came out, your conversation on December 7th, and your conversation sometime after the 11th, did the President tell you that Ms. Monica Lewinsky was on the witness list in the Jones case?

A. He did not.

Q. And did you consider this information to be important in your efforts to be helpful to Ms. Lewinsky?

A. I never thought about it.

Mr. Jordan found out about Ms. Lewinsky's subpoena on December 19 when a weeping Ms. Lewinsky telephoned him and came to his office. Mr. Manager HUTCHINSON played that excerpt from the testimony this morning. I won't replay it. Mr. Jordan then did what I think is best called due diligence. He talked to Ms. Lewinsky, got her a lawyer, asked her whether there was any sexual relationship with the President, and was assured that there was not. That same evening, he went to the White House and made a similar inquiry of the President and he received a similar response.

[Text of videotape presentation:]

Q. And still on December 19th, after your meeting with Ms. Lewinsky, did you subsequently see the President of the United States later that evening?

A. I did.

Q. And is this when you went to the White House and saw the President?

A. Yes.

Q. At the time that Ms. Lewinsky came to see you on December 19th, did you have any plans to attend any social function at the White House that evening?

A. I did not.

Q. And in fact there was a social invitation that you had at the White House that you declined?

A. I had—I had declined it; that's right.

Q. And subsequent to Ms. Lewinsky visiting you, did you change your mind and go see the President that evening?

A. After the—a social engagement that Mrs. Jordan and I had, we went to the White House for two reasons. We went to the White House to see some friends who were there, two of whom were staying in the White House; and secondly, I wanted to have a conversation with the President.

Q. And this conversation that you wanted to have with the President was one that you wanted to have with him alone?

A. That is correct.

Q. And did you let him know in advance that you were coming and wanted to talk to him?

A. I told him I would see him sometime that night after dinner.

Q. Did you tell him why you wanted to see him?

A. No.

Q. Now, was this—once you told him that you wanted to see him, did it occur the same time that you talked to him while Ms. Lewinsky was waiting outside?

A. It could be. I made it clear that I would come by after dinner, and he said fine.

Q. Now, let me backtrack for just a moment, because whenever you talked to the President, Ms. Lewinsky was not inside the room—

A. That's correct.

Q. —and therefore, you did not know the details about her questions on the President might leave the First Lady and those questions that set off all of these alarm bells.

A. [Nodding head up and down.]

Q. And so you were having—is the answer yes?

A. That's correct.

Q. And so you were having this discussion with the President not knowing the extent of Ms. Lewinsky's fixation?
A. Uh—
Q. Is that correct?
A. Correct.
Q. And, regardless, you wanted to see the President that night, and so you went to see him. And was he expecting you?
A. I believe he was.
Q. And did you have a conversation with him alone?
A. I did.
Q. No one else around?
A. No one else around.
Q. And I know that's a redundant question.
A. It's okay.
Q. Now, would you describe your conversation with the President?
A. We were upstairs, uh, in the White House. Mrs. Jordan—we came in by way of the Southwest Gate into the Diplomatic Entrance—we left the car there. I took the elevator up to the residence, and Mrs. Jordan went and visited at the party. And the President was already upstairs—I had ascertained that from the usher—and I went up, and I raised with him the whole question of Monica Lewinsky and asked him directly if he had had sexual relations with Monica Lewinsky, and the President said, "No, never."
Q. All right. Now, during that conversation, did you tell the President again that Monica Lewinsky had been subpoenaed?
A. Well, we had established that.
Q. All right. And did you tell him that you were concerned about her fascination?
A. I did.
Q. And did you describe her as being emotional in your meeting that day?
A. I did.
Q. And did you relate to the President that Ms. Lewinsky asked about whether he was going to leave the First Lady at the end of the term?
A. I did.
Q. And as—and then, you concluded that with the question as to whether he had had sexual relations with Ms. Lewinsky?
A. And he said he had not, and I was satisfied—end of conversation.
Q. Now, once again, just as I asked the question in reference to Ms. Lewinsky, it appears to me that this is an extraordinary question to ask the President of the United States. What led you to ask this question to the President?
A. Well, first of all, I'm asking the question of my friend who happens to be the President of the United States.
Q. And did you expect your friend, the President of the United States, to give you a truthful answer?
A. I did.
Q. Did you rely upon the President's answer in your decision to continue your efforts to seek Ms. Lewinsky a job?
A. I believed him, and I continued to do what I had been asked to do.

This morning, a very short portion of the President's grand jury testimony was played. The sound was not very good. It was a very short snippet, but it relates to what happened between Mr. Jordan and the President in that December 19, late-night meeting at the White House. The snippet that was played for you was:

Q. And Mr. Jordan informed you of that, is that correct?

"That" being the subpoena.

A. No, sir.

That leaves the misleading impression in his grand jury testimony the President did not acknowledge this visit with Mr. Jordan. The question right above the one that was quoted, however, was the following:

Q. You were familiar, weren't you, Mr. President, that she had received the subpoena? You have already acknowledged that.

The answer was, "Yes, sir, I was."

And then two pages later, the President was asked by the OIC:

Q. Did you, in fact, have a conversation with Mr. Jordan on the evening of December 19, 1997, in which he talked to you about Monica being in Mr. Jordan's office, having a copy of the subpoena and being upset about being subpoenaed?

And the President's answer was:

I remember that Mr. Jordan was in the White House on December 19 for an event of some kind, that he came up to the residence floor and told me that he had—that Monica had gotten subpoenaed or Monica was going to have to testify and I think he told me he recommended a lawyer for her. I believe that's what happened, but it was a very brief conversation.

So I think it is absolutely clear that there is no conflict between the President's testimony and Mr. Jordan's testimony about this. Mr. Jordan had recommended Ms. Lewinsky and took her to the lawyer's office, to a lawyer, a Mr. Frank Carter, a respected Washington, DC, lawyer, to whom Mr. Jordan had recommended other clients.

[Text of videotape presentation:]

Q. Now, you have referred other clients to Mr. Carter during your course of practice here in Washington, D.C.?
A. Yes, I have.
Q. About how many have you referred to him?
A. Oh, I don't know. Maggie Williams is one client that I—I remember very definitely.
I like Frank Carter a lot. He's a very able young lawyer. He's a first-class person, a first-class lawyer, and he's one of my new acquaintances amongst lawyers in town, and I like being around him. We have lunch, and he's a friend.

Q. And is it true, though, that when you've referred other clients to Mr. Carter that you never personally delivered and presented that client to him in his office?
A. But I delivered Maggie Williams to him in my office. I had Maggie Williams to come to my office, and it was in my office that I introduced, uh, Maggie Williams to Mr. Carter, and she chose other counsel. I would have happily taken Maggie Williams to his office.

I will skip the next two videotapes, 21 and 22. I hear a sigh of relief.

I want to use the next videotape—and I am almost through—to correct the record as to one point that was made by the managers on Thursday. And again, this representation was important because it asserted an interconnection between the job search assistance and testimony in the Jones case.

We were shown a chart on Thursday and it was a chart that was entitled "Interconnection Between Job Help and Testimony."

Managers' version:

Q. [so you] Talk to her both about the job and her concerns about parts of the affidavit.

Answer, according to the managers' version, "That is correct."

When we actually looked at the testimony which we will see in just a second, the question is:

Q. Did you, in fact, talk to her about the job and her concerns about parts of the affidavit?
A. I have never in any conversation with Ms. Lewinsky talked to her about the job, on the one hand, or job being interrelated with the conversation about the affidavit. The affidavit was over here. The job was over here.

I don't suggest any intentional misrepresentation, but I think the record deserves to be corrected.

[Text of videotape presentation:]

Q. Do you know why you would have been calling Mr. Carter on three occasions, the day before the affidavit was signed?

A. Yeah. I—my recollection is—is that I was exchanging or sharing with Mr. Carter what had gone on, what she had asked me to do, what I refused to do, reaffirming to him that he was the lawyer and I was not the lawyer. I mean, it would be so presumptuous of me to try to advise Frank Carter as to how to practice law.

Q. Would you have been relating to Mr. Carter your conversations with Ms. Lewinsky?

A. I may have.

Q. And if Ms. Lewinsky expressed to you any concerns about the affidavit, would you have relayed those to Mr. Carter?

A. Yes.

Q. And if Mr. Carter was a good attorney that was concerned about the economics of law practice, he would have likely billed Ms. Lewinsky for some of those telephone calls?

A. You have to talk to Mr. Carter about his billing.

Q. It wouldn't surprise you if his billing did reflect a—a charge for a telephone conversation with Mr. Jordan?

A. Keep in mind that Mr. Carter spent most of his time in being a legal services lawyer. I think his concentration is primarily on service, rather than billing.

Q. But, again, based upon the conversations you had with him, which sounds like conversations of substance in reference to the affidavit, that it would be consistent with the practice of law if he charged for those conversations?

A. That's a question you'd have to ask Mr. Carter.

Q. They were conversations of substance with Mr. Carter concerning the affidavit?

A. And they were likely conversations about more than Ms. Lewinsky.

Q. But the answer was yes, that they were conversations of substance in reference to the affidavit?

A. Or at least a portion of them.

Q. In other words, other things might have been discussed?

A. Yes.

Q. In your conversation with Ms. Lewinsky prior to the affidavit being signed, did you in fact talk to her about both the job and her concerns about parts of the affidavit?

A. I have never in any conversation with Ms. Lewinsky talked to her about the job, on one hand, or job being interrelated with the conversation about the affidavit. The affidavit was over here. The job was over here.

Q. But the—in the same conversations, both her interest in a job and her discussions about the affidavit were contained in the same conversation?

A. As I said to you before, Counselor, she was always interested in the job.

Q. Okay. And she was always interested in the job, and so, if she brought up the affidavit, very likely it was in the same conversation?

A. No doubt.

Q. And that would be consistent with your previous grand jury testimony when you expressed that you talked to her both about the job and her concerns about parts of the affidavit?

A. That is correct.

Q. Now, on January 7th, the affidavit was signed. Subsequent to this, did you notify anyone in the White House that the affidavit in the Jones case had been signed by Ms. Lewinsky?

A. Yeah. I'm certain I told Betty Currie, and I'm fairly certain that I told the President.

Q. And why did you tell Betty Currie?

A. I'm—I kept them informed about everybody else that was—everything else. There was no reason not to tell them about that she had signed the affidavit.

Q. And why did you tell the President?

A. The President was obviously interested in her job search. We had talked about the affidavit. He knew that she had a lawyer. It was in the due course of a conversation. I would say, "Mr. President, she signed the affidavit. She signed the affidavit."

Q. And what was his response when you informed him that she had signed the affidavit?

A. "Thank you very much."

Q. All right. And would you also have been giving him a report on the status of the job search at the same time?

A. He may have asked about that, and—and part of her problem was that, you know, she was—there was a great deal of anxiety about the job. She wanted the job. She was unemployed, and she wanted to work.

Q. Now, I think you indicated that he was obviously concerned about—was it her representation and the affidavit?

A. I told him that I had found counsel for her, and I told him that she had signed the affidavit.

Q. Okay. You indicated that he was concerned, obviously, about something. What was he obviously concerned about in your conversations with him?

A. Throughout, he had been concerned about her getting employment in New York, period.

Q. And he was also concerned about the affidavit?

A. I don't know that that was concern. I did tell him that the affidavit was signed. He knew that she had counsel, and he knew that I had arranged the counsel.

In his presentation, Mr. Manager HUTCHINSON discussed the breakfast with Ms. Lewinsky, which Mr. Jordan now concedes he had, on December 31. He showed you the restaurant bill. I am not going to dwell long on that because it really is not relevant to article II.

First of all, it is nowhere alleged as a ground of obstruction of justice. Mr. Manager HUTCHINSON referred to the seven pillars of obstruction in article II. Those are seven different factual grounds. This alleged obstruction is nowhere in the grounds.

There is plainly a conflict in the testimony between Ms. Lewinsky and Mr. Jordan; although Mr. Jordan, as you will recall, vehemently denies ever giving that instruction, saying in the videotape played this morning: "I'm a lawyer and I'm a loyal friend, but I'm not a fool. That's ridiculous. I never did that."

The second reason why I think this is irrelevant is, it was not presented as a separate ground for impeachment by the independent counsel. It was identified—the fact of the conflicted testimony was identified, but it was not urged as a separate ground, despite the very, very energetic investigation of Mr. Starr. We have heard a lot in this case about "dogs that won't hunt." In my mind, this is like a Sherlock Holmes story about the dog that didn't bark. If the independent counsel didn't raise it, that is significant. Finally, it has nothing whatsoever to do with the President, by anybody's contention.

Mr. Chief Justice, I would like to raise a question now, which arose in the final stage of the Vernon Jordan deposition. Mr. Manager HUTCHINSON had taken the deposition. I had asked a couple of questions in response. After I had concluded, Mr. Jordan made a statement defending his own integrity to which Mr. Manager HUTCHINSON objected. I propose—since the issue has arisen of his integrity and since Mr. Jordan is an honorable man and has had a distinguished career—that I be allowed to play the approximately 2-minute segment of his own statement about his integrity.

The CHIEF JUSTICE. Do the managers object?

Mr. Manager HUTCHINSON. Mr. Chief Justice, it is my understanding that that is not a part of the Senate record, and therefore it would not be appropriate to be played under the rules of the Senate.

The CHIEF JUSTICE. But is it a part of the deposition of him that was taken?

Mr. Manager HUTCHINSON. It is not a part of the deposition that was entered into the Senate record under the Senate rules.

The CHIEF JUSTICE. Well, the Parliamentarian advises me that Division I of the motion on Thursday, which was approved,

would prevent the playing of that. So the Chair will rule that that is not acceptable.

Mr. LEAHY addressed the Chair.

The CHIEF JUSTICE. The Senator from Vermont, Mr. LEAHY, is recognized.

Mr. LEAHY. I was one of the Senators at that deposition. I think it would be extremely interesting to hear it. It was taken at the deposition. I ask unanimous consent that it——

Mr. NICKLES. Regular order.

The CHIEF JUSTICE. The Senator from Vermont may appeal the decision of the Chair, which is that it not be played, ask consent for——

Mr. LEAHY. I'm asking unanimous consent, under the circumstances and because it is so short, that the deposition—and it would clarify that part of the deposition Mr. Jordan gave, which has been videotaped—be allowed to be shown here on the floor.

The CHIEF JUSTICE. Is there objection?

Mr. NICKLES. Objection.

The CHIEF JUSTICE. Objection is heard.

Counsel may proceed.

Mr. Counsel KENDALL. I would like to recognize my colleague. Well, I think that concludes our presentation.

Mr. Counsel RUFF. We yield back the remainder of our time, Mr. Chief Justice.

The CHIEF JUSTICE. Very well. The managers have 31 minutes remaining.

The Chair recognizes Mr. Manager BRYANT.

Mr. Manager BRYANT. Thank you, Mr. Chief Justice. We will conclude our roughly half hour by responding to as many of the contentions and statements raised by counsel for the White House as we can. I first want to talk, I suppose, about the statement that we heard back a couple of weeks ago, which was repeated today by one of the White House counsels, that "the managers want to win too much."

This is not a game. This is not a game to anyone here. There are extraordinary consequences to what we are doing and what we have been doing and what your decision will be. The stakes are very high. We don't need to take a poll to do what we did. I am reminded of the testimony of the President and Dick Morris taking the poll to determine whether to tell the truth or not, and then after deciding the public would not forgive his perjury, he said, "We will just have to win." But that's not the attitude the House managers have in bringing this case here. The managers fully appreciate the seriousness and the consequences of this. We want to do the right thing. We are not here just to win. We want to help the Senate in this constitutional process do the constitutional thing—not only for the precedent of this Senate but for the precedent of future generations in terms of how the courts now and later will view obstruction of justice and perjury. We believe this is a constitutional effort and not a game.

The question about snippets, that we just put some snippets on the air today—we wanted to call live witnesses. We wanted Ms. Lewinsky to be here and let everybody examine her fully and completely. But we are working with a timeframe, and we brought up

those points in her testimony and in Mr. Jordan's testimony and Mr. Blumenthal's testimony that we felt proved our case.

With regard to the issue that Ms. Seligman raised about filing a false affidavit, she ran that testimony many times. I thought we ran the President's earlier in these hearings several times, but I think she beat our record with that testimony. I appreciate that.

But what that is important for is not what Ms. Lewinsky felt was going on that night; but I think it perfectly illustrates what I told you the other day about her testimony. While she was truthful and while she gave us the testimony she had to give us to keep her immunity agreement, where there were some blanks to fill in, or where there was something that could be bent, she did so.

As they pointed out on the question of the linkage between filing an affidavit and this cover story, it was so obvious that they were connected that the OIC did not ask that question, "Did you think about this when you"—and that. It was obvious. But he did not ask that question. She was right; the question was not asked. So when she, Ms. Lewinsky, had an opportunity in these hearings, when I asked her, she said, "Well, you know, I really didn't link the two together." Let's not throw away all of our common sense here.

She gets a phone call in the middle of the night with a message that you are on the witness list, and she says three things occurred: You are on the witness list, you can file an affidavit, and you can use a cover story. Why else would the President raise the issue of a cover story at 2:30 in the morning if he didn't intend for her to use that?

But keep in mind, too, it really doesn't matter how she appreciated this. It really matters what the President intended. And he intended to let her know that she was on the list, she could be subpoenaed, she could file an affidavit, and she could use the cover story.

And in fact she did use that cover story. She went to her lawyer, Mr. Carter, and told him that. And it was incorporated into the draft affidavit that she went to take papers to the President to sign, and in those cases she may have been alone. But they didn't like the specter of her being alone. So they struck that provision out of the final affidavit. But they did attempt to use it.

But keep in mind also that it is the President's intent. And his intent was to interfere with justice in the Paula Jones case and to have her give a false affidavit. And that is why he so suggested that.

On the gifts to people, is it really an issue? Is there really an issue here? There is some fabulous lawyering over here. But there is no issue here. Ms. Lewinsky testified that there was no doubt in her mind that Ms. Currie initiated the call. That is all there is to this issue. The fact that there were other calls in the day, the fact that one of the other calls may have been at 3:30, really are moot points. The issue is, if Betty Currie initiated that phone call, the only impetus for her to initiate that call had to come from the President. She was not in that conversation that morning. The President had to tell her, and apparently did so, because she made the call.

At the end of the examination of her testimony, or toward the end—it was shown several times—we asked her, "Did the Presi-

dent ever tell you anything about the gifts?" And she said, "Not that I remember." And then later on in the segment, you also saw she was asked the question again by me: "OK. Were you ever under any impression or the impression from the President that you should turn over all the gifts to the Jones lawyers?" And she said, "No." Then she goes on to say, "This gets a little tricky here, and it could be I heard the statements from agents, or somewhere along the line, or perhaps that it did sound familiar."

I would suggest to you what happened there is that Mr. Carter—it is clearly in the testimony and before all of us in the record—her own lawyer told her she had to turn over all the records. That is where she heard that.

But logic demands that you reject that view, because why would the President, whose intent was to conceal this whole affair, ever think of telling her that: You have to turn over all those gifts? If he did tell her that she had to turn over all of those gifts, why would she immediately go out that afternoon and reject that instruction, and just completely say: Well, I am going to forget what he told me to do. I am going to call his secretary and have her come pick up these gifts and store them for me?

That is just not logical. Common sense tells us that didn't happen that way. Ms. Lewinsky was absolutely positive that there was no doubt that Betty Currie initiated the call. And that is that.

Job search: Very quickly, this is not a bribery case. This is not giving her a job, bribing her with a job to get her false testimony. It is not a bribery case. If it was, we wouldn't be arguing about the impeachability of obstruction of justice. It would be clear that bribery is mentioned in the Constitution. It is about attempting to corruptly persuade or influence the behavior of a witness. That is exactly what that is about.

I would also close very quickly by telling you in the beginning I urged you to look at particularly obstruction of justice charges, the result-benefit analysis. And I do not ever hear anybody talking about that but me. So maybe I am off base here. But I ask you to consider each of these seven pillars of obstruction that Mr. HUTCHINSON raised, and look at the end results of those acts, and look at who benefited from those results. And what I believe you would have found and can still find is that each case resulted in impeding justice in the Paula Jones case in some way that favored the President. And the benefit naturally inured to the President.

I guess if you reject that result-benefit test, and if you accept each and every argument of these extremely fine defense counsel that the President wasn't behind any of this, then I guess you just have to reach the conclusion that the President was the luckiest man in the world, that people would commit crimes by filing false affidavits, by hiding evidence, by going out and possibly trashing the witnesses and giving false testimony in grand jury proceedings. If that is the way you feel about it, so be it; we will abide by your judgment. But I suggest to you that the facts of this case are really not in contest. They have been argued very well by defense counsel for the White House.

I am about to exhaust my time. So I yield to Mr. Manager HUTCHINSON to make some remarks.

The CHIEF JUSTICE. The Chair recognizes Mr. Manager HUTCHINSON.

Mr. Manager HUTCHINSON. Thank you, Mr. Chief Justice. This will be very brief, and then I will yield to Mr. GRAHAM.

Let's recall Ms. Monica Lewinsky to the stand for a brief moment. Let's go to the Park Hyatt Hotel, December 31, 1997, breakfast between Ms. Lewinsky and Mr. Jordan.

[Text of videotape presentation:]

A. Well, the—sort of the—I don't know what to call it, but the story that I gave to Mr. Jordan was that I was trying to sort of alert to him that, gee, maybe Linda Tripp might be saying these things about me having a relationship with the President, and right now, I'm explaining this to you. These aren't the words that I used or how I said it to him, and that, you know, maybe she had seen drafts of notes, trying to obviously give an excuse as to how Linda Tripp could possibly know about my relationship with the President without me having been the one to have told her. So that's what I said to him.

Q. And what was his response?

A. I think it was something like go home and make sure—oh, something about a—I think he asked me if they were notes from the President to me, and I said no. I know I've testified to this. I stand by that testimony, and I'm just recalling it, that I said no, they were draft notes or notes that I sent to the President, and then I believe he said something like, well, go home and make sure they're not there.

Q. And what did you do when you went home?

A. I went home and I searched through some of my papers, and—and the drafts of notes I found, I sort of—I got rid of some of the notes that day.

Q. So you threw them away?

A. Mm-hmm.

THE REPORTER: Is that a "yes"?

THE WITNESS: Yes. Sorry.

Thank you. This goes to the overall pattern of obstruction. It goes to credibility. I believe it is relevant in this case. I yield to Mr. GRAHAM.

The CHIEF JUSTICE. The Chair recognizes Mr. Manager GRAHAM.

Mr. Manager GRAHAM. Thank you, Mr. Chief Justice. How much time do I have?

The CHIEF JUSTICE. You have 18 minutes and some seconds.

Mr. Manager GRAHAM. I may yield back some of the seconds, I hope.

[Laughter.]

Point of agreement, rebuttal is to refocus, and the law allows that for the person or the party with the burden. And we do have the burden.

Point of agreement, White House counsel says there is much more that we need to know. There is much more we need to know.

White House counsel said strongly, when these proceedings opened up, the President is not guilty of obstruction of justice, the President is not guilty of perjury. Refocus: No fair-minded person, in my opinion, could come to any other rational conclusion than that our President obstructed justice, that our President committed perjury in front of a grand jury.

You vote your conscience. I have told you to do so. If we disagree at the end of the day, that is America at its best. I have never suggested there was any reasonable doubt that this President committed crimes. I will ask you at the conclusion of this case to remove him with a clear conscience. You vote your conscience, and I know it will be clear.

Refocus: The gifts. Simply put, if you believe the President of the United States, in his grand jury testimony, said: I told her, look, the way these things work is when a person gets a subpoena, you have to give them whatever you have. That's what the law is, if you believe that, we need to congratulate our President because he did, in fact, state the law correctly, he fulfilled his obligation as Chief Executive Officer of the land. He fulfilled his obligation as an honorable person by telling someone, who happened to be Ms. Lewinsky: You are doing a bad thing here even by suggesting we do something with these gifts. You need to turn them over because that is what the law says.

If you believe that, that is the only time he really embraced the law in this case, as I can see. Everything about him, in the way he behaved, was 180 degrees out from that statement. That is the most self-serving statement that flies in the face of every action he took for months. The truth is that a reasonable person should conclude that when Ms. Lewinsky approached him about what to do with the gifts, he said: I'll have to think about that. And you know what, ladies and gentlemen, he thought about it. And do you know what he did after he thought about it.—Betty, go get those gifts. And they wound up under the bed of the President's secretary. And the people are wondering what the heck happened here? What the heck happened here is you have a man trying to hide his crimes.

Affidavit—where I come from, if you call somebody at 2:30 in the morning, you are up to no good.

[Laughter.]

That will be borne out, if you listen to the testimony and use your common sense. He was up to no good. He told her: My heart is breaking because you are on this witness list and maybe here's a way to get out of it. That is the God's truth. That is what he did. That is wrong. That is a crime.

The rule of law, what does it mean? It means that process and procedure wins out over politics and personality. That means that subpoenas have to be honored by the great and the small. That means when subpoenas come, you can't, as the President, try to defeat them because you are nobody special in the eyes of the law—except that you are the guardian of the law. If you are special, you are special in a more ominous way, not a lesser way.

When you file an affidavit in a court of law, nobody, because of their position in society, has the right to cheat and to get somebody to lie for them, even as the President. That means we are not a nation of men or kings, we are a nation of laws. And that is what this case has always been about to me.

This affidavit was false for a reason—because the President and Ms. Lewinsky wanted it to be false.

The job search? "Mission accomplished," says it all. "Mission accomplished." It went from being no big deal to the biggest deal in the world with a telephone bill. I don't know what the telephone bill was to get this job, but it was huge. "Mission accomplished."

All these are crimes. All these are things that average Americans should not be allowed to do. But I am going to tell you something. At this point in time what is going on is that he is trying to conceal a relationship about the workplace that would be embarrassing and that would be illegal and that would help Ms. Jones and would

hurt him. And it is not just about his private life. But you can say this about the President, he was trying to get her a job and he was trying to just get her to file a false affidavit so this would go away. And he was trying to hide the gifts. That is bad but that is not nearly as bad as what was to come.

Let me tell you what was to come, ladies and gentlemen. After the deposition, when it was clear that Ms. Lewinsky may have been talking, or somebody knew something they weren't supposed to know, the alarm bells went off and concealing the relationship changed to redefining the relationship. That is why he should not be our President. The redefining of the relationship began very quickly after that deposition. It started with the President's secretary, and it goes like this: The President, on two occasions, under the guise of refreshing his memory, makes the following statements to his secretary: You were always there when she was there, right? We were never really alone? You could see and hear everything? Monica came on to me, and I never touched her, right? She wanted to have sex with me, and I couldn't do that.

If you believe that is about refreshing your memory, you are not being reasonable. That is about coaching a witness. But here is where it gets to be nasty. Here is where it gets to be mean: "Monica came on to me, and I never touched her, right? She wanted to have sex with me, and I couldn't do that." He didn't say it once, he said it twice, just to make sure Ms. Currie would get the point.

Now that Ms. Lewinsky may be a problem, let me tell you how the discussion goes. It is not from concealing; now it is redefining.

Conversation with Mr. Morris, after they did the poll about what to do here, and "We just have to win." The President had a followup conversation with Mr. Morris during the evening of January 22, 1998, the day after the story broke, when Mr. Morris was considering holding a press conference to blast Ms. Lewinsky out of the water. The President told Mr. Morris to be careful, to be careful. According to Mr. Morris, the President warned him not to be too hard on Ms. Lewinsky because "there is some slight chance that she may not be cooperating with Mr. Starr and we don't want to alienate her by anything we are going to put out." In other words, don't blast her now, she may not be a problem to us.

During this period of time, it went from concealing to redefining. When he knew he had to win, what did he do? He went to his secretary and he made her a sexual predator and him an innocent victim, and he did it twice. But did he do it to anybody else? Did he redefine his relationship to anybody else?

I now would like to have a clip from Mr. Blumenthal, please.

[Text of videotape presentation:]

Q. You have a conversation with the President on the same day the article comes out, and the conversation includes a discussion about the relationship between him and Ms. Lewinsky, is that correct?

A. Yes.

Next tape:

Q. Now, you stated, I think very honestly, and I appreciate that, you were lied to by the President. Is it a fair statement, given your previous testimony concerning your 30-minute conversation, that the President was trying to portray himself as a victim of a relationship with Monica Lewinsky?

A. I think that's the import of his whole story.

Ladies and gentlemen, that is the import of his whole story. That story was told on the day this broke in the press, and it goes on. That story is very detailed. It makes him the victim of a sexual predator called Ms. Lewinsky. He had to rebuff her. She threatened him. And it goes on and on and on. I have always wondered, how did that story make it to the grand jury and how did it make it into the press? We know how it made it to the grand jury, because Mr. Blumenthal told it, and the President told him, and they claimed executive privilege, and the President never straightened it out. Your President redefined this relationship, and your President let that lie be passed to a grand jury. Your President obstructed justice in a mean way.

Next statement.

[Text of videotape presentation:]

Q. That's where you start talking about the story that the President told you. Knowing what you know now, do you believe the President lied to you about his relationship with Ms. Lewinsky?

A. I do.

Q. Okay. Do you have any idea how White House sources are associated with statements such as "She's known as 'Elvira'," "She's obsessed with the President," "She's known as a flirt," "She's the product of a troubled home, divorced parents," "She's known as 'The Stalker'"? Do you have any idea how that got in the press?

MR. BREUER: I'm going to object. The document speaks for itself, but it's not clear that the terms that Mr. Lindsey has used are necessarily—any or all of them—are from a White House source. I object to the form and the characterization of the question.

MR. GRAHAM: The ones that I have indicated are associated with the White House as being the source of those statements and—

SENATOR SPECTER: Senator Edwards and I think that question is appropriate and the objection is overruled.

THE WITNESS: I have no idea how anything came to be attributed to a White House source.

Everybody wants this over so bad you can taste it, including me, but don't let's leave a taste behind that history cannot stand. It was shouted in this Chamber, "For God's sake, vote."

Let me quietly, if I can, for God's sake, get to the truth; for God's sake, figure out what kind of person we have here in the White House; for God's sake, spend some time to fulfill your constitutional duty so that we can get it right, not just for our political moment but for the future of this Nation.

When the President redefined this relationship, he did so by telling a lie. He told a lie to a key White House aide, who repeated that lie to a Federal grand jury. In our system, ladies and gentlemen, that is a crime. That lie made it into the public domain. That lie was mean. That lie would have the effect of running this young lady over. You think what you want to think, too, about Ms. Tripp. I agree she is not going to be in the hall of fame of friends, but let me tell you, the best advice she gave that young lady was to keep that blue dress.

The final thing is that our President, in my opinion, and for you to judge, in August of last year, after being begged not to by many Members of this body and prominent Americans, appeared before a Federal grand jury to answer for his conduct in this case. We have alleged that with forewarning and knowledge on his part, that instead of clearing it up and making America a better place, instead of fulfilling his role as the chief law enforcement officer of the land to do honor to the law, instead of taking this burden off all

Americans' backs, he told a story that defies common sense, that he played a butchery game with the English language that "is" maybe is not is, and "alone" is not alone, and he told John Podesta, "My relationship with Ms. Lewinsky was not sexual, including oral sex."

He went on and told an elaborate farce to a Federal grand jury that they just didn't ask the right question and really the sexual relationship did include one thing but not another. And he says he never lied to his aides, and he says he never lied to the grand jury. Well, God knows he lied to somebody, and he lied to that grand jury, and this whole story is a fraud and a farce. The last people in the United States to straighten it out is the U.S. Senate. God bless you in your endeavors.

Mrs. BOXER addressed the Chair.

The CHIEF JUSTICE. The Chair recognizes the Senator from California.

Mrs. BOXER. In light of the negative comments made against Mr. Jordan by Manager HUTCHINSON and Manager GRAHAM, I ask once again unanimous consent that in fairness—

Mr. GREGG. Regular order.

Mr. LOTT. Regular order.

The CHIEF JUSTICE. Regular order of business has been called for.

Mrs. BOXER. I ask unanimous consent that, in fairness, Mr. Jordan's 2-minute testimony regarding his own integrity be shown to the Senate at this time.

The CHIEF JUSTICE. Is there objection?

Mr. GREGG. I object.

The CHIEF JUSTICE. Objection is heard.

Mr. LOTT. Mr. Chief Justice, has all time been used or yielded back?

The CHIEF JUSTICE. All time has been used or yielded back.

NOTICE OF INTENT TO SUSPEND THE RULES OF THE SENATE BY SENATOR LOTT

In accordance with Rule V of the Standing Rules of the Senate, I (for myself, Mr. Daschle, Mrs. Hutchison, Mr. Harkin, Mr. Wellstone, Ms. Collins, Mr. Specter, and Mr. Leahy) hereby give notice in writing that it is my intention to move to suspend the following portions of the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials in regard to any deliberations by Senators on the articles of impeachment during the trial of President William Jefferson Clinton.

(1) The phrase "without debate" in Rule VII;

(2) the following portion of Rule XX: ", unless the Senate shall direct the doors to be closed while deliberating upon its decisions. A motion to close the doors may be acted upon without objection, or, if objection is heard, the motion shall be voted on without debate by the yeas and nays, which shall be entered on the record"; and

(3) In Rule XXIV, the phrases "without debate", "except when the doors shall be closed for deliberation, and in that case" and ", to be had without debate".

PROGRAM

Mr. LOTT. That concludes the presentations for today. The Senate will reconvene as a Court of Impeachment on Monday at 1 p.m. At that time, the managers and White House counsel will proceed to closing arguments for not to exceed 3 hours each and further business will resume after that.

ADJOURNMENT UNTIL 1 P.M. MONDAY, FEBRUARY 8, 1999

Mr. LOTT. I ask unanimous consent that the Court of Impeachment stand adjourned under the previous order.

There being no objection, at 5:06 p.m. the Senate, sitting as a Court of Impeachment, adjourned until Monday, February 8, 1999, at 1 p.m.

SUPPORT OF MOTION TO DISMISS ARTICLES OF IMPEACHMENT

Mr. DODD. Mr. Chief Justice, last week the Senate, sitting as a Court of Impeachment, voted on Senator BYRD's motion to dismiss the articles of impeachment brought by the managers from the House of Representatives. I voted in support of this motion, and would like to briefly state my position on this important question.

While the motion failed, it received the support of 44 Senators—11 more votes than needed to acquit the President of the charges made by the articles. Therefore, this vote demonstrates to a near certainty that there are insufficient votes to support the managers' position that the President should be convicted.

This result comes as a surprise to no one—including most, if not all, of those who support the President's removal. These articles should never have been presented to the Senate. The President's actions were undoubtedly reprehensible. They deserve condemnation and may warrant prosecution after he leaves office. But they do not warrant removal—a sanction unprecedented in our Nation's history, and one that the framers of our Constitution envisioned would be used in only the rarest of circumstances to protect the country.

The case presented by the managers is fatally deficient in three respects:

First, the facts presented, even if viewed in the light most favorable to the managers' case, do not allege conduct that meets the high standard laid out by the framers for the impeachment, conviction, and removal from office of a President.

Second, the articles as drafted are vague and contain multiple allegations—denying the President the fairness and due process that is the right of every American citizen, and depriving Senators of the clarity that is essential to discharging their responsibility as triers of fact.

Third, the managers have failed to present facts that meet their heavy burden of proving the allegations contained in the articles.

Let me address these points in turn.

The conduct alleged by the managers to be worthy of conviction arises out of a private, civil lawsuit and a private, consensual, yet improper relationship between the President and Ms. Monica Lewinsky. It is the President's conduct in that lawsuit and in that relationship that are the basis of the charges at issue here. No charges arise from his official conduct as President.

It is worth noting that, with regard to the Jones matter, the Supreme Court itself considered the conduct alleged therein to be private. The Court ruled that, while the President may delay or avoid until leaving office lawsuits based on his official conduct, he may

claim no such immunity in an action based on private conduct unrelated to official duties.

The managers claim that what is at issue is not the President's private actions but his actions in connection with efforts to prevent his relationship with Ms. Lewinsky from becoming known to his family and others. These actions, the managers argue—including his testimony in the grand jury and his statements to staff and others—are official in nature. However, these actions clearly arise out of the President's efforts to keep secret a personal relationship which he admitted to be wrong. Under no reasonable analysis can they be understood to relate to the President's official duties.

It follows, then, that the President's actions certainly do not rise to the level of "treason, bribery or other high crimes and misdemeanors" set forth by the framers as the standard for removing a President from office. As Alexander Hamilton explained, impeachment is to be reserved as "a remedy for great injuries done to the society itself". The impeachment process is intended to protect the Nation from official wrongdoing, not punish a President for personal misconduct.

It is not in my view reasonable to conclude that the President's actions—while by his own admission wrong and offensive—pose a danger to the institutions of our society. The President's past behavior did not—and his continuation in office does not—pose a threat to the stability of those institutions.

Indeed, I submit that convicting and removing the President based on these actions, not the actions themselves, would have a destabilizing effect on our institutions of government. Were this scenario to come to pass, then henceforth any President would have to worry that he or she could be removed on a partisan basis for essentially personal conduct. That standard would weaken the Presidency. In the words of Madison, it would in effect make the President's term equivalent to "a tenure during pleasure of the Senate", and upset the careful system of checks and balances established by the framers to govern relations between the legislative and executive branches.

The articles also deserve to be dismissed because of the fatally flawed manner in which they are drafted. Those flaws are of two separate kinds.

First, the articles fail to allege wrongdoing with the kind of specificity required to allow the President—or indeed, any person—to defend himself, and to allow the Senate to fully understand and judge the charges made against him. White House counsel described the articles as an "empty vessel", a "moving target" where neither the President nor the Senate knows with precision what has been alleged. Senators were presented with videotaped testimony of former Federal prosecutors who stated that standard prosecutorial practice requires that allegations of perjury and obstruction must be stated with particularity and specificity. The allegations here have not been so stated. That lack of specificity is manifestly unfair to the President. And it is detrimental to the Senate's ability to discharge its responsibility as the trier of fact in this case.

The second fatal structural flaw in the articles is that the managers have aggregated multiple allegations of wrongdoing into sin-

gle articles. Article I allows the President to be impeached for "one or more" of four enumerated, unspecified categories of alleged misconduct. Similarly, in article II he is alleged to have obstructed justice in "one or more" of seven ways. This smorgasbord approach to the allegations creates the deeply troubling prospect that the President could be convicted and removed without two-thirds of the Senate agreeing on what precisely he did wrong. For this reason, too, dismissal is appropriate.

Dismissal is, finally, appropriate because the facts undergirding the managers' case do not prove the criminal wrongdoing the managers allege. Manager MCCOLLUM told the Senate that it must first find criminal wrongdoing and then determine whether to remove the President from office. While it is left to each Senator to determine the standard of proof he or she will use to judge the evidence, Manager MCCOLLUM's own analysis suggests that that standard should be beyond a reasonable doubt. After all, that is the standard used in all other criminal cases. Why should the President be subjected to any lower standard than that to which all citizens are entitled? Indeed, he should not—not only because he deserves no less fairness than other citizens, but also because this high standard of proof is appropriate to the gravity of the sanction the Senate is being asked to impose.

In my view, the managers have failed to prove criminal culpability on the part of the President beyond a reasonable doubt. The record is replete with exculpatory, contradictory, and ambiguous facts.

Consider, for example, these:

(1) Ms. Lewinsky—who was questioned some 22 times by investigators, prosecutors, and grand jurors (not to mention twice by the managers themselves)—said under oath that neither the President nor anyone else ever asked her to lie.

(2) She also said—again, under oath—that no one ever promised her a job for her silence.

(3) Further, she stated without contradiction that the President did not suggest that she return the gifts given her by the President to him or anyone else on his behalf.

(4) Betty Currie, the President's secretary—who was questioned some nine times—likewise testified that the President did not suggest that the gifts to Ms. Lewinsky be returned.

(5) She also said that she never felt pressure to agree with the President when he spoke with her following the Jones deposition, and, indeed, felt free to disagree with his recollection.

(6) Lastly, the managers argued that a December 11, 1997 ruling by the judge in the Jones case, permitting the calling of witnesses regarding the President's conduct, triggered intensive efforts that very day by the President and Vernon Jordan to help Ms. Lewinsky find a job. We now know that the facts contradict that account of the managers. A meeting on that date between Mr. Jordan and Ms. Lewinsky was scheduled 3 days earlier. It was held several hours before the judge's ruling. At the time of that ruling, Mr. Jordan was on an airplane bound for Holland.

In addition, factual discrepancies between the President and Ms. Lewinsky—about when their relationship began, about the nature of the inappropriate contacts between them, about the number of

those contacts, and about the number of inappropriate telephone calls between them—amount to differences in recollection that in no way can be considered criminal on the part of the President. More fundamentally, they cannot be considered material to this proceeding. Not even the Office of Independent Counsel considered these discrepancies relevant or material to the matter at hand. It cannot reasonably be argued, in any event, that the President should be removed from his office because of them.

For all of these reasons—the failure of the managers to prove beyond a reasonable doubt that the President committed criminal wrongdoing, the structural flaws in the articles themselves, and the failure of the allegations, even if proven, to warrant the unprecedented action of conviction and removal—these articles should be dismissed. We have reviewed enough evidence, heard enough arguments, and asked enough questions to know with reasonable certainty that the flaws in the managers' case cannot be remedied. We know enough to decide this matter now. The national interest is best served not by extending this proceeding needlessly, but by ending it.

I regret that the Senate has failed to do that. But I continue to believe that we must dispose of this matter as soon as possible so we can return to the other important business of the Nation.

OPPOSITION TO MANAGERS' MOTION FOR THE APPEARANCE OF WITNESSES

Mr. DODD. Mr. Chief Justice, last week the Senate, sitting as a Court of Impeachment, voted on a motion by the managers for the appearance of witnesses and to admit evidence not in the trial record. I opposed this motion, and would like to briefly state my reasons for doing so.

While the motion carried, the fact that it was opposed by 44 Senators demonstrates that a large number of our colleagues believe that the record of this case is sufficient to allow Senators to decide on the articles of impeachment. Indeed, it is not merely sufficient, it is voluminous. As I will discuss more fully below, neither the managers nor counsel for the President would in any way be harmed by a requirement that they rely on the record as presently constituted.

Let me concede at the outset that this motion is not an easy one to decide. There is an argument to be made for calling witnesses. Our colleagues who believe there ought to be witnesses are motivated by earnest reasons.

However, the issue for us is not whether there is a case for witnesses. It is this: Do we need to hear from witnesses in order to fulfil our responsibility as triers of fact? The answer to that question, in my opinion, is no. We know enough to decide this case, and decide it now.

There may be legitimate reasons for calling witnesses. But the reasons for not calling them are compelling.

There are five reasons, in particular, that strongly argue against the motion.

First, the record is more than sufficient to allow the Senate to decide this case. We are all painfully familiar with the essential de-

tails of this matter. Like most Americans, we have been subjected to the blizzard of media attention paid to it from its very start just over a year ago.

This is not 1868, when only a handful of people could witness the last Presidential impeachment. One hundred and thirty years later, we can receive an independent counsel's voluminous and graphic report over the Internet literally at the moment it is made available to the public. We can witness the proceedings of the House Judiciary Committee live on television. We can observe the televised impeachment proceedings in the House Chamber as if we are there.

This trial is now in its fourth week. We have been provided with massive portions of a record that exceeds 67,000 pages in length. We have heard days of arguments. Ninety of us have asked some 105 questions to the House Republican managers and to counsel for the President.

So I daresay that the facts of this case have been drilled into our consciousness—relentlessly, overwhelmingly, and, it seems endlessly.

I should add one more adverb: repeatedly. That leads to the second reason for not calling witnesses: they have testified repeatedly and without contradiction on the key facts.

Again and again, the record shows the same questions asked of the same witnesses. Ms. Lewinsky has been questioned a total of 23 times; Ms. Currie 9 times; Mr. Jordan 6 times; and Mr. Blumenthal 5 times. They were asked hundreds upon hundreds of questions—by some of the toughest, shrewdest legal minds in the country. Their testimony fills in excess of two 2,500 pages of the trial record.

What is the likelihood that prolonging this trial to hear from these and possibly other witnesses will bring new details to light that could change the outcome of this trial? Regarding at least one witness—Ms. Lewinsky—we know from her interview by the managers two weekends ago: virtually nil.

A third reason to oppose this motion is that witness testimony will invite the introduction of salacious details onto the floor of the U.S. Senate—details with which we are already painfully familiar, and details about which any differences between the President and Ms. Lewinsky are immaterial and irrelevant to the charges contained in the articles presented by the House Republican managers.

The managers tell us that they have no interest in raising any such details. But sexual misconduct is at the core of this case. Manager BRYANT admitted as much when he said on the floor that the issue in article I is "perjury about sex". The same could be said about article II—the issue is obstruction about sex.

Every question about perjury or obstruction, then, necessarily invites testimony about the sexual details of this scandal. Given the massive size of the record, I do not think we need to risk allowing the Senate to become a forum for that kind of speech. It will not bring dignity to this proceeding or credit to this institution.

If we somehow think that we can summon witnesses to appear in this trial and at the same time guarantee that the Senate will not become a kind of burlesque stage for the airing of this case's

tawdry factual essence, let me remind my colleagues of the frenzied circus that formed immediately upon the news that Ms. Lewinsky had arrived in Washington, D.C. for questioning by the managers. Once the door to witnesses is opened, the Senate will be hard-pressed to keep that atmosphere from spilling into this trial and this body.

The fourth reason why we should not call witnesses is that they will prolong this process needlessly and extensively. Senator WARNER made the point well several days ago: It is questionable whether the list of witnesses, and the time required to hear from them, could be strictly limited because to do so might deny the President his right to defend himself.

The point was echoed by one of the attorneys for the President. He stated that he and his associates would be committing "malpractice" if they failed to seek the most aggressive possible discovery process should that course be opened to them.

That discovery process may reasonably be expected to include subpoenas for documents, interviews with corroborating witnesses, depositions, examinations and cross-examinations. As any person familiar with litigation knows, such a process is not easily restricted in time and scope. It could take weeks, or longer, to conclude. During that time, Senators would not necessarily be free from the burdens of serving as triers of fact in the Court of Impeachment. They could well be called upon to make any number of evidentiary rulings. They could be called upon to comment publicly on matters raised during depositions—including on salacious matters that deserve no comment. In short, this process could drag on and on.

Fifth, and finally, let me say that I remain unconvinced by the argument of the managers that witnesses are so critical here. They have failed convincingly to explain why witnesses are so indispensable in this trial if they were so dispensable during the impeachment proceedings in the other body.

During those proceedings, Mr. Manager HYDE said that "the most relevant witnesses have already testified at length about the matters in issue. And in the interest of finishing our expeditious inquiry, we will not require most of them to come before us to repeat their testimony." Regarding Monica Lewinsky and Linda Tripp, he added that they "have already testified under oath. We have their testimony. We don't need to reinvent the wheel."

Likewise, Mr. Manager GEKAS stated during the House hearings that "bringing in witnesses to rehash testimony that's already concretely in the record would be a waste of time and serve no purpose at all."

The fervor with which the managers call for witnesses now is not only inconsistent with their refusal to call them earlier, it is also inconsistent with their underlying assertion that the facts in evidence already prove the President's criminal culpability. If the managers have any doubt about whether their evidence was sufficient to prove guilt and justify removal, then they had a responsibility to resolve those doubts in the House of Representatives—before they came to this body and had us take an oath to do impartial justice. They should never have put us through this trial.

In conclusion, and at the risk of stating the obvious, we should remember that we, the Members of the Senate, are the triers of fact here. We are the ones who control how this trial is to be conducted. Each side deserves to be treated fairly. But neither side deserves an unlimited and open-ended right to put forth their arguments.

I have never known a lawyer arguing a losing case to say he or she couldn't benefit from one more day in court. The proper response to a lengthy trial and a weak case is not more length and more case—it is an end to the case.

Does anyone seriously believe that the outcome of this proceeding will be changed by allowing a parade of witnesses?

Does anyone seriously believe that they will shed new and meaningful light on the key areas of this dispute?

After our historic, bipartisan agreement to begin this trial, after weeks of the trial itself, after the opportunity to read a massive factual record, after the opportunity to ask over 100 questions—after all this, I do not believe that witnesses are now needed to demonstrate the Senate's commitment to conduct this trial in a fair and thorough manner. The dignity of this proceeding and the decorum of this institution are not likely to be enhanced—and could well be damaged—by taking such a step.

In my view, the managers' motion to call witnesses is the expression of an increasingly desperate desire to breathe life into a case that—as the vote on the motion to dismiss demonstrated—has failed to convince anywhere close to two-thirds of the Senate as to its merit. They are eager for something, anything, to rescue the sinking ship that their impeachment has become.

Their motion, furthermore, is an expression of the partisan process that they began in the House and now seek to perpetuate in the Senate. Having lost five seats in the November elections, Republican leaders in the other body, including the managers, knew that their best chance to impeach the President was during the lame duck session of the 105th Congress. So they eschewed a bipartisan inquiry, decided not to call witnesses, and forbade Members from considering a censure resolution in that Chamber—all so they could force a vote on articles of impeachment before the start of the 106th Congress. Two of the articles considered failed. Two others passed, but only by exceedingly slim margins: the article alleging obstruction of justice would have failed if just five Representatives had voted differently; the article alleging perjury would have failed if just 11 Representatives had cast their vote against impeachment.

Having rushed to judgment in the House, the managers now rush to delay judgment in the Senate. Why? I think the reason is obvious: because they know that their case is weak. From the moment the articles were drafted in the House, they have attempted to obscure that inescapable fact.

Each side of this dispute has now had ample opportunity to present its case. The time has come to bring this matter to a close, and return to the other compelling issues that we were elected to address. While I regret that the majority party in the Senate has decided to move forward with the calling of witnesses and gath-

ering of additional information, I remain hopeful that we can conclude this trial at the earliest possible opportunity.

MONDAY, FEBRUARY 8, 1999

[From the Congressional Record]

The Senate met at 1:06 p.m. and was called to order by the Chief Justice of the United States.

TRIAL OF WILLIAM JEFFERSON CLINTON, PRESIDENT OF THE UNITED STATES

The CHIEF JUSTICE. The Senate will convene as a Court of Impeachment. The Chaplain will offer a prayer.

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Almighty God, guide the Senators today as they move closer to the completion of this impeachment trial and confront some of the most difficult decisions of their lives. Give them physical strength and mental fortitude for this day. In anticipation of Your burden-lifting blessing, we place our trust in You.

We renew our prayers for peace in the Middle East. Thank You for the life and leadership of King Hussein of Jordan, that persistent peacemaker and emissary of light in the often dim negotiations for just peace. Now at this time of his untimely death, we pray for the people of Jordan and for his son, King Abdullah, as he assumes the immense challenges of leadership. In Your holy Name. Amen.

The CHIEF JUSTICE. The Sergeant at Arms will make the proclamation.

The Sergeant at Arms, James W. Ziglar, made proclamation as follows:

Hear ye! Hear ye! Hear ye! All persons are commanded to keep silent, on pain of imprisonment, while the Senate of the United States is sitting for the trial of the articles of impeachment exhibited by the House of Representatives against William Jefferson Clinton, President of the United States.

The CHIEF JUSTICE. The Chair recognizes the majority leader.

Mr. LOTT. Thank you, Mr. Chief Justice.

ORDER OF PROCEDURE

Mr. LOTT. This afternoon the Senate will resume consideration of the articles of impeachment. Pursuant to S. Res. 30, the Senate will proceed to final arguments for not to exceed 6 hours, equally divided between the House managers and the White House counsel.

At the conclusion of those arguments today, I expect the Senate to adjourn the impeachment trial until tomorrow. We expect tonight, when we go out of the impeachment trial, to have a period for legislative business so we can pass a resolution or consider a resolution with regard to King Hussein.

ORDER FOR TUESDAY, FEBRUARY 9, 1999

Mr. LOTT. I now ask unanimous consent that when the Senate completes its business today, it stand in adjournment, to reconvene as a Court of Impeachment at 1 p.m. on Tuesday, February 9, 1999.

The CHIEF JUSTICE. Without objection, it is so ordered.

UNANIMOUS CONSENT REQUEST

Mr. LOTT. Mr. Chief Justice, I ask unanimous consent that the February 5, 1999, affidavit of Mr. Christopher Hitchens and the February 7, 1999, affidavit of Ms. Carol Blue be admitted into evidence in this proceeding.

The CHIEF JUSTICE. Is there objection?

Mr. DASCHLE. At this juncture in the trial, I am compelled to object.

The CHIEF JUSTICE. Objection is heard.

Mr. LOTT. I believe we are ready to proceed, Mr. Chief Justice.

The CHIEF JUSTICE. The Chair recognizes Mr. Manager SENSENBRENNER.

Mr. Manager SENSENBRENNER. Mr. Chief Justice, distinguished counsel for the President, and Senators, I am Congressman JIM SENSENBRENNER. I represent 580,000 people in southeastern Wisconsin in the U.S. House of Representatives. During my entire service in Congress, I have served as a member of the Committee on the Judiciary of the House of Representatives.

We are nearing the end of a long and difficult process. The Senate has considered for the past several weeks the grave constitutional responsibility to determine whether the actions of President Clinton merit his conviction and removal from office. The Senate has been patient, attentive and engaged throughout this unwelcome task, and for this the House managers are grateful. The managers also thank the distinguished Chief Justice for his patience and impartial demeanor throughout this trial.

At the outset of the managers' closing arguments, it is important to distinguish what has caused only the second Presidential impeachment in history from extraneous matters that bear no relation to the verdict the Senate will shortly reach. When this trial began 4 long weeks ago, we said that what was on trial was the truth and the rule of law. That has not changed, despite the lengthy legal arguments you have heard. The truth is still the truth and a lie is still a lie. And the rule of law should apply to everyone no matter what excuses are made by the President's defenders.

The news media characterizes the managers as 13 angry men. They are right in that we are angry, but they are dead wrong about what we are angry about. We have not spent long hours poring through the evidence, sacrificed time with our families and subjected ourselves to intense political criticism to further a political vendetta. We have done so because of our love for this country and respect for the Office of the Presidency, regardless of who may hold it. We have done so because of our devotion to the rule of law and our fear that if the President does not suffer the legal and constitu-

tional consequences of his actions, the impact of allowing the President to stand above the law will be felt for generations to come.

"The Almanac of American Politics" has called me "a stickler for ethics." To that, I plead guilty as charged because laws not enforced are open invitations for more serious and criminal behavior. This trial was not caused by Kenneth Starr, who only did his duty under a law which President Clinton himself signed. It was not caused by the House Judiciary Committee's review of the independent counsel's mountain of evidence. Nor was it caused by the House of Representatives approving two articles of impeachment, nor by the Senate conducting a trial mandated by the Constitution.

Regardless of what some may say, this constitutional crisis was caused by William Jefferson Clinton and by no one else. President Clinton's actions, and his actions alone, have caused the national agenda for the past year to be almost exclusively concentrated on those actions and what consequences the President, and the President alone, must suffer for them.

This trial is not about the President's affair with Monica Lewinsky. It is about the perjury and obstruction of justice he committed during the course of the civil rights lawsuit filed against him, and the subsequent independent counsel investigation authorized by Attorney General Janet Reno.

The President has repeatedly apologized for his affair, but he has never, never apologized for the consequences of the perjury and obstruction of justice he has committed. Perhaps those decisions were based upon a Dick Morris public opinion poll which told the President that the American people would forgive his adultery but not his perjury. Perhaps it was for another reason. Whatever the White House's motivations were, the fact remains that the President's apologies and the statements of his surrogate contritionists have been carefully crafted for the President to continue to evade and, yes, avoid responsibility for his deceiving the courts to prevent them from administering justice.

Because the President's actions to obstruct justice are so egregious and repeated, many have ignored his grand jury perjury, charges before you in article I. I wish to point out four glaring examples of William Jefferson Clinton's perjurious, false and misleading statements to the grand jury and not at the civil deposition in the Paula Jones case.

First, the President lied under oath to the grand jury when he falsely testified about his attorneys' use of a false affidavit at his deposition. Second, he lied under oath to the grand jury about his conversations with Betty Currie. Third, he lied under oath to the grand jury about what he told his aides about his relationship with Ms. Lewinsky, knowing that those aides would be called to testify to the grand jury. Fourth, he lied under oath to the grand jury when he testified about the nature of his relationship with Ms. Lewinsky.

An ordinary citizen who lies under oath four times to a grand jury is subject to substantial time in a Federal prison. The decision each Senator must make with respect to article I is whether the President is to pay a price for his perjury, just like any citizen must. The President's defenders and spin doctors would have you believe that the President told all of these lies under oath to pro-

tect himself and his family from personal embarrassment, and even if he did tell a lie, it was not that bad a lie.

Senators, please remember that the President's grand jury appearance was over 6 months after the news media broke the story about the President's affair with Ms. Lewinsky. By August 17, few people doubted that he had an affair with her. There was little left to hide. And he lied after practically everyone who was asked—including many of you—advised the President to tell the truth to the grand jury. And still he lied.

We have heard a litany of excuses, including the President saying he was not paying a great deal of attention and that he was trying to figure out what the facts were, and that he needed to know whether his recollection was right, and that he had not done anything wrong. And on and on. The President knew what had happened. If Monica Lewinsky came on to him and made a sexual demand upon him and he rebuffed her, as he told Sidney Blumenthal, he would have nothing to apologize for.

Senators, don't be fooled by the President's excuses and spin control. The facts and the evidence clearly show that he knew what he was doing was to deceive everyone, including the grand jury. He and his defenders are still in denial. They will not accept the consequences of his repeated and criminal attempts to defeat the judicial process. His lies to the grand jury were not to protect his family or the dignity of his office but to protect himself from criminal liability for his perjury and obstruction of justice in the Jones case.

Over 9 years ago, the Senate removed Judge Walter Nixon from office for about the same offense—lying under oath to the grand jury. The vote in the Senate was 89–8 in favor of Judge Nixon's removal, with 48 current Senators and Vice President GORE voting guilty. To boot a Federal judge from office while keeping a President in power after the President committed the same offense sets a double standard and lowers the standard of what the American people should expect from the leader of their country. To conclude that the standard of Presidential truthfulness is lower than that of a Federal judge is absurd. To conclude that perjury and obstruction of justice are acceptable if committed by a popular President during times of peace and prosperity sets a dangerous precedent which sets America on the road back to an imperial Presidency above the law.

To justify the President's criminal behavior by demonizing those who seek to hold him accountable ignores the fact that President Clinton's actions, and those actions alone, precipitated the investigations which have brought us here today. To keep a President in office whose gross misconduct and criminal actions are a well-established fact will weaken the authority of the Presidency, undermine the rule of law, and cheapen those words which have made America different from most other nations on the Earth: equal justice under law.

For the sake of our country and for future generations, please find the President guilty of perjury and obstruction of justice when you cast your votes.

THE JOURNAL

The CHIEF JUSTICE. The Chair recognizes Mr. Manager CANNON. If you will wait a moment, Mr. Manager CANNON. If there is no objection, the Journal of the proceedings of the trial is approved to date. Please go ahead.

Mr. Manager CANNON. Mr. Chief Justice, counsel to the President, Members of the Senate, my name is CHRISTOPHER B. CANNON, and I represent over 600,000 people in the Third District of Utah.

I want to begin with a couple of thank-yous. First, I thank you Senators for your attention during this series of presentations. I know that you all have deep conflicts over the matter before you. Some of you have made strong and public statements about it. But you have all paid extraordinary attention, and for that I thank you.

I also thank the other members of the management team. It has been a remarkable experience to have been associated with them during the last 5 months—almost as good, I might say, as it would have been to have been home with my wife, children, and our new baby.

I want to share with you a recent family experience. I have been home just about a little over a day out of the last 3 weeks. It took my 10-month-old baby a little while to warm up to me when I was home last. Later, as I started packing, she realized I was leaving again and she insisted that I hold her. I think she felt that if she held on, I wouldn't disappear. Unfortunately, she fell asleep during the trip to the airport. I know that the other managers have had similar disruptions in their families. For instance, CHARLES CANADY's wife had a baby during the trial.

I, therefore, thank my wife and children, and the wives and children of all of the managers for their forbearance and support during this process. Like us, they believe in the obligation we have to assure good government. I might say that, like us, they are grateful that the managers' role is ending.

For the managers, this process is almost done. I hope that history will judge that we have done our duty well. We have been congratulated and condemned. But we are done.

While our difficult role is ending, yours is just beginning. While I am certain that sitting here silently has been difficult, the truly daunting task before you now is to conclude this trial with some sense of legitimacy. For America is deeply divided, and the end result of an impeachment trial was designed by the Founding Fathers to salve those wounds. Traditionally, after an airing of the facts and a vote by the Senate, either a President is removed or he is vindicated. In this case, it seems, neither of those results may be realized. While the facts are clear that the President committed perjury and obstruction of justice, it is equally clear that this body may not remove him from office. From this perception, you face the challenge of legitimizing the end result. Your vote will end this matter. It is nonjusticiable. Whatever your decision is, it cannot be undone. The outcome will be right by definition. But how well you do the work of divining that outcome will affect the way we as a nation deal with the divisions among us.

To proceed in a manner that will be trusted, and viewed as legitimate by the American people, you must deal with the differences between this proceeding and prior impeachment trials. You must do this with an obvious commitment to your oath to do justice impartially according to the Constitution and the law. The law includes the rules and precedents of the Senate.

Senate Resolution 16 made this process different from all of the preceding 13 Senate trials on impeachment, principally by removing from the managers the right to present our case as we see fit. I suspect that the lewd subject matter and the partisan fight in the House may have influenced your decision.

But there is an integrity to the historic rules and reasons for them. For instance, the Senate by nature will be divided in the impeachment proceedings while the managers are united. It is therefore easier for the managers to decide on how to present their case than for the Senate.

There are other differences in this proceeding from historic impeachment practice before the Senate. May I list the changes for you with the intent to help you focus on the goal of a conclusion that we, the people, will feel is legitimate.

Senate Resolution 16 called for a 24-hour presentation or "trial," that mainly consisted of what the public saw as the yammering of lawyers. Time was equally divided rather than sequenced as it is in a trial where opening statements are made and then evidence is put on through witnesses. In a trial, each side typically takes the time necessary to establish its case or undermine the witness through cross-examination. After the moving party has made its case, the responding party makes it case. Time is dictated only by what each side feels it needs. Each witness is subject to whatever cross-examination is appropriate. The case develops tested piece by tested piece, and ultimately one side prevails.

Here, the managers had to cut very important portions of our limited case. We had a limited number of witnesses, limited to videotaped appearances, limited to fit an arbitrary three hour rule. That time was lessened because we had to reserve time for rebuttal.

According to judicial traditions, defendants have to challenge each witness as they appear, not wrap the credibility of all in one wide ranging response. In these proceedings, the Senate has not had the opportunity to assess the credibility of witnesses as the case developed. The White House then used its time with long video portions and small cutting accusations. Who knows what the White House might have done if it had been able, or found it necessary, to challenge witnesses as they testified?

Another diversion from judicial and Senate trial precedent was that the only rebuttal for the managers was what we reserved after our video presentation and, awkwardly, in the questioning period where important, complicated issues were cut off by artificial time limits, while peripheral issues got more time than they deserved. This questioning period had the unfortunate side effect of focusing the public on the partisanship of the Senate.

The problem of the newness of the presentation format was exacerbated by our new media environment. The Internet with its immediate and often unvetted content, and cable television with its

perpetual talking heads, gave equal time and equivalency of weight to the managers and the White House, with no witness testimony to constrain them. The process gave rise to the perception that the "fix was in," leaving some to gloat at having scammed the situation, and others angry at being unheard.

And that is the context within which the Senate must now find a legitimate outcome. Given the wide-ranging discussions of options, it is clear this is no easy task. Will it be:

Adjournment with condemnation?

Findings of fact about the President's behavior?

A bifurcated vote to show agreement with the articles of impeachment but not removing the President?

A simple up or down on the articles of impeachment?

Or a vote for acquittal followed by censure?

I don't know which, if any, of these options really makes sense. And I don't know of any other options. I do know that the issue is grave, and that your responsibility is great.

So I am here today to ask you to set aside some natural inclinations for the good of the country.

I implore you, Senators, both Republican and Democrat, to set aside partisanship, politics, polls, and personalities and exchange them for loftier inclinations—those of "procedure," "policy," and "precedents." These are the only guidelines this body should have.

As the Senate deliberates this case, I ask that a few key facts never be forgotten:

One. That the President committed perjury when he lied under oath.

Two. The Senate has historically impeached judges for perjury—even recently by some of you assembled here.

Three. Any American watching these proceedings who commits perjury would also be punished by the law.

Four. If the Senate follows our Nation's precedents of punishing perjurers, and if the Senate follows its own precedents of convicting perjurers, then there is only one clear conclusion in this matter: conviction.

Senators, we as Americans and legislators have never supported a legal system which has one set of laws for the ruler and another for the ruled. After all, our very own Pledge of Allegiance binds us together with the language of "liberty and justice for all." If that is the case, if we intend to live up to the oaths and pledges we take, then our very own President must be subject to the precedents our Nation's judicial system and this Senate body have heretofore set.

Because I love this country and its institutions, I pray for inspiration for each of you as you seek the proper, legitimate outcome. May God bless you in the process.

Thank you.

The CHIEF JUSTICE. The Chair recognizes Mr. Manager GEKAS.

Mr. Manager GEKAS. Mr. Chief Justice, colleagues on each side of the podium, Members of the Senate, if I were to take some time to thank the Chief Justice for his patience in all this, would that be counted against my time?

The CHIEF JUSTICE. Yes.

Mr. Manager GEKAS. Then I will send you a note.

[Laughter.]

We do offer our thanks to the Chief Justice.

I come from Pennsylvania, and the people in my district and the entire State, and the people in their 49 brethren States across the Nation recognize that there is really only one issue, with all the fury and the tumult and the shouting and the invective, the language, and just the plain shouting that has occurred across the Halls of Congress and every place else in the country.

It all swoops down the telescope to one issue: Did the President utter falsehoods under oath? Everyone understands that. Everyone comes to the conclusion that that is a serious allegation that has been made through the impeachment, and one which you must judge in the final vote that you will be casting.

But why is it important about whether or not the President uttered the falsehoods under oath? It is important not just to constitute the basis of perjury, as is alleged, and/or obstruction of justice, which is alleged, but even if those two were not proved in all their elements as crimes, you would still have to consider a falsehood under oath as constituting an impeachable offense. I say that advisedly.

It starts—my contention does—with the assertions of our esteemed colleagues who represent the President. Time after time, and in their briefs and in their statements on and off the floor, they have stated you need not have a criminal offense for it to constitute an impeachable offense. They provided examples of that. They said that all you have to demonstrate is that an impeachable offense is one that rocks against the integrity of the system of government. I am paraphrasing, of course.

I submit—and I feel this so strongly that it bothers me that I can't make it clear—that to violate the oath as a witness in a civil case, or a criminal case, in the Jones matter, or in the grand jury, smashes against the integrity of our system of government. There are sundry reasons for that.

In this case, if you follow the logic and the extreme intellectual presentation made by White House counsel that refutes every item that—or attempts to refute, not refutes—attempts to refute every item asserted by the managers, if you believe all of that and are confused or in doubt about the Jones case and whether lies under oath were committed, or at the grand jury, you must think about this. This is, to me, proof positive that the President uttered falsehoods under oath in all of his public stances.

On December 23, the President, under oath, answered interrogatories that were sent to him by the court in the Jones case in which he said, in answer to the question, Have you ever had sexual relations with anyone in a subordinate role while you were Governor of Arkansas, or President of the United States?—this is important. At that time—and the record will disclose all of this—at that time, there was no definition in front of him, no gaggle of attorneys trying to dispute what word meant what, no judge there to interpose the legal standard that should be employed, but rather the boldfaced, naked phrase of "sexual relations" that everyone in the whole world understands to be what it is—and the President answered under oath "None."

I submit to the Members of the Senate, if the answer then, December 23, before ever stepping foot in the deposition of the Paula Jones case, if he never appeared there, or whatever he said there was so clouded you can't draw a conclusion, certainly you can refer back to December 23 and see a starting point of a pattern of conduct on the part of the President that proves beyond all doubt that he committed a pattern and actual falsehoods under oath time and time again.

If that is not enough, on January 15, as the record will disclose, he answered under oath requests for documents in which the question is asked under oath, to which the President responded, Have you ever received any gifts or documents from—and it mentioned among others Monica Lewinsky—and the President under oath said "No" or "None." The record will show for sure exactly what he said. But he denied that any gifts were transferred from, or any documents, or any items of personalty, from Lewinsky to the President.

I submit to you that if you are confused about that, because of the great presentation made by the counsel for the President about the murkiness and cloudiness of the Jones deposition, the maddening consequences of the President's testimony—"maddening," they said—then you can refer back to January 15 before the deposition, and December 23, and find proof positive in the documents already a part of the case that you have to decide that, indeed, a pattern of falsehoods under oath was initiated and conducted by the President of the United States.

That is very important. Those allegations, by the way, have gone completely uncontradicted by the President of the United States.

I think they took great delight—these colleagues of mine on behalf of the President—great delight in saying—at one point they put the marquee in the sky, that in so many different ways when Monica Lewinsky said, "Nobody told me to lie," that was the case for them. What a case they made. "Nobody told me to lie." They won the case right then and there in their minds, because that was exculpatory and that was brandishing in this case once and for all, Monica said, "Nobody told me to lie."

I am going to take some liberties with the Latin that I learned in school, and we all learned in college and law school, "falsum in unum is falsum in toto," meaning if you say something false in one phase of your testimony, more than likely the triers of fact can find that you were false in all of them.

I am going to change that. I think I am right when I say that "veritas in unum is veritas in toto." So when Monica Lewinsky says, "Nobody told me to lie," and that is the indomitable, indestructible truth that the White House counsel say, that is the case, then it also must be "veritas in toto," because when she said that she gave gifts to the President, then you must accept that "veritas in unum is veritas in toto."

That goes on and on and on.

Somebody is waving, "Cut this short."

[Laughter.]

It is very tough for me to do that, but I will comply.

I have a witness. I call a witness to bolster my part of this summation. The witness is the American people.

Mr. Craig, in his last appearance on this podium, was delighted to be able to quote a poll that showed that 75 percent of the people of our country felt that there was no need to present videotapes to the Senate in the trial—75 percent, he said with great gusto, of the American people.

Of course the polls of all types were quoted time and time again by the supporters of the President as showing why you should vote to acquit. The polls, the polls, the polls.

I now call the American people's poll on whether or not they believe that the President committed falsehoods under oath—80 percent of the American people—I call them to my side here at the podium to verify to you that the President committed falsehoods under oath.

The CHIEF JUSTICE. The Chair recognizes Mr. Manager CHABOT.

Mr. Manager CHABOT. Thank you. I am STEVE CHABOT. I represent the First District of Ohio, which is Cincinnati.

This week we will likely finally conclude this trial. Has it been difficult? Yes. Would we all have preferred that none of this ever happened? Of course. But the President has put our Nation through a terrible ordeal, and it has been our duty to pursue this case to its conclusion.

Despite the dire warnings, scare tactics and heavy-handed threats by those who would circumvent the solemn constitutional process that we are all engaged in, our great country has survived. We have finished this trial in just a few weeks. The economy continues to be strong, and the Nation's business is getting done.

But, Senators, before you turn out the lights and head home, you must make one final decision. It is a decision that should not be influenced by party affiliation or by politics or by personal ties. It is a decision that should be guided by our Constitution, by our laws, and by your own moral compass.

A few months ago I stood here in your shoes, as did all the colleagues here, and the colleagues in the House, preparing to make what would likely be the most important vote of our careers. Throughout the process, I did my best to be fair, to keep an open mind. I listened carefully to the views of my constituents, the people who sent me to Congress. I reviewed the evidence in excruciating detail. Ultimately, for me, the choice was clear. I came to the conclusion that it was my duty to support impeachment. Now it is your turn to cast what could be the most important vote of your political careers. The question is, Will moral fortitude or political expediency rule the day?

This past weekend, I had the opportunity to spend a couple hours at my college alma mater, William and Mary, not too far from here, down in Williamsburg, VA. As I walked around the campus, I could not help but think back to my college days and what motivated me to seek public office in the first place.

Back in 1972, I was a 19-year-old college student casting my first ballot in a Presidential election. Like a majority of Americans that year, I voted for a Republican, Richard Nixon, for President. Four years later, however, I voted for a Democrat, Jimmy Carter. This decision stemmed from my profound disappointment over Water-

gate and a strong conviction that President Nixon should not have received immunity for his actions.

Now, just as in college, I find myself extremely troubled by the actions of a President. In fact, as I started to think about what I would say to you today, I wasn't sure how to begin. How exactly do you wrap up in 10 minutes or less everything we have witnessed in the last year? We have seen Bill Clinton's finger-waving denial to the American people. We have seen the President lie before a Federal grand jury. We have seen the President obstruct justice. We have seen the President hold a public celebration immediately following the House impeachment vote. We all know the President's behavior has been reprehensible.

President Clinton, however, refuses to admit what all of us know is true. To this day, he continues to deny and distort; he continues to dispute the undeniable facts that are before the Senate and before the American people. The President's attorneys have done their best to disguise the truth as well.

At the beginning of this trial, I predicted in my presentation that they would use legal smokescreens to mask the law and the facts. To their credit, they produced smoke so thick that it continues to cloud this debate. But if you look through the smoke and the mirrors employed by these very able lawyers, you will see the truth. The truth is that President Clinton lied to a Federal grand jury. He lied about whether or not he had committed perjury in a civil deposition, about the extent of his relationship with a subordinate Federal employee, about his coaching of his secretary, Betty Currie, and about the countless other matters.

In my opening statement before this body, I outlined the four elements of perjury: an oath, intent, falsity, materiality. In this case, all those elements have been met.

President Clinton also obstructed justice and encouraged others to lie in judicial proceedings. He sought to influence the testimony of a potentially adverse witness with job assistance, and he attempted to conceal evidence that was under subpoena.

These truths cannot be ignored, distorted, or swept under the rug. Some of the President's partisan defenders want you to do just that. But it would be wrong. It would be wrong for you to send the message to every American that it is acceptable to lie under oath and obstruct justice. It would be wrong for you to tell America's children that some lies are all right. It would be wrong to show the rest of the world that some of our laws don't really matter.

I must agree with Phyllis and Jack Stanley, constituents of mine who live in my district, who wrote me a letter saying:

> We believe that President Bill Clinton should definitely be impeached for the sake of the country. If he is not impeached, will not the rule of law in this country be weakened? We do not feel glee over the prospect of President Clinton's impeachment, however. For the sake of coming generations, acknowledging that integrity, honor and decency matter greatly is very important, especially in the highest office of the land.

Like most of you, I have spent countless hours at grocery stores, shopping malls, in schools, in my church talking to my constituents. I have also read thousands of letters that have been sent to my office, just as we all have. What I have heard and read doesn't surprise me. People in Cincinnati, OH, have a variety of views on

what the ultimate verdict should be by this body. Many want the President removed from office. Others want a censure. Still others would just like to see the process end. But regardless of their views, they are honorable people who care about our country and our future.

I know that throughout the process some of the President's more partisan defenders have harshly criticized the managers, the House of Representatives, and anyone who would dare believe the President committed any crimes. These partisan attacks have been unfortunate because I think we all know that these issues are serious and that they deserve serious consideration. I know it, the American people know it, and I think you all know it, too. But despite the partisan rhetoric of the attacks, I believe that once this trial ends, we must work together.

So I ask everyone here today to make a commitment, a commitment to every American, that regardless of the trial's outcome, we will join together to turn the page on this unfortunate chapter that President Clinton has written into our Nation's history.

The question before you now is: How will this chapter end? Will the final chapter say that the U.S. Senate turned its back on perjury and obstruction of justice by a President of the United States, or will it say that the Senate took a principled stand and told the world that no person, not even the President, stands above the law; that all Americans, no matter how rich, how powerful, or how well connected, are accountable for their actions, even the President.

As the father of two children and a former schoolteacher myself at an inner-city school in Cincinnati, I believe it is very important that we teach our children that honesty, integrity, and the rule of law do matter.

While I am in Cincinnati, I spend a lot of time visiting schools throughout my community. I taught the seventh and eighth grades back in Cincinnati. When I go there, I go to elementary schools, I go to junior highs, I go to high schools; and I have been doing this for a number of years. Do you know what is inevitably one of the questions that the kids will ask me almost every time? It is, "Have you ever met the President of the United States?"

Why do kids ask that question? Because our kids understand how important the Office of the Presidency is. The person who occupies that office owes it to the children of this Nation to treat the office with respect. In the past, when those kids asked me that question, they asked me that question out of pride and respect. They looked up to the office. They looked up to everything the office represents. Bill Clinton has let our children down, and that is one of the greatest things that bothers me. It is the effect this will have on the children of this Nation.

Let me conclude with a statement that I received recently from a student, Juliette Asuncion, at Mother Mercy High School:

I am writing to express my feelings on the scandalous situation that has taken over the White House for the past couple of months. First, I would like to state the qualities that should be found in the President of the United States. Since the President is the official representative of the United States, he should uphold the values and ideals held by the people of this country. The President should be honest and a trustworthy person. He should be a good decision maker, have good morals and have his priorities straight. He should devote his time to the country and set a good example for the people of this Nation. I feel that President Clinton does not measure

up to these standards. He's lied to the American people; he's committed perjury. For someone in his position, this is an unforgivable act, and he should not be allowed to just walk away without a punishment. He has shown that he feels he can go above the law, and I strongly believe the President should be impeached.

I conclude by telling you, when you cast your vote, you remember that by your vote you are determining the lesson that Julia, your children and grandchildren will learn. So how will this chapter end? The decision is yours.

I now yield to the gentleman from Georgia, ROBERT BARR.

The CHIEF JUSTICE. The Chair recognizes Mr. Manager BARR.

Mr. Manager BARR. Thank you, Mr. Chief Justice.

Distinguished and worthy adversarial counsel for the President, including my good friend and former Georgetown law professor, Charles Ruff, gentlemen and ladies of the Senate, my name is BOB BARR. I represent the Seventh District of Georgia, but in a broader sense I represent the country because I have been directed, as every one of the other 12 managers of the House has been directed by the American people, by a majority vote of the House of Representatives, to urge you to review the evidence and issue a verdict of conviction on the two articles of impeachment passed by the House of Representatives.

Two days ago, all of us celebrated the birthday of former President Ronald Reagan. During his first year in office, on May 17, 1981, this President, known for giving voice to America's best and most decent instincts, spoke to the American people from Notre Dame University. Though spoken nearly 18 years ago, and clearly not in contemplation of an impeachment, the former President's words provide guidance for you today.

It was that date that President Reagan spoke of a certain principle; and in so doing, he quoted another giant of the 20th century, Winston Churchill. Specifically, President Reagan spoke of those who derided simple, straightforward answers to the problems confronting our country; those who decried clarity and certainty of principle, in favor of vagueness and relativism. He said:

They say the world has become too complex for simple answers. They are wrong. There are no easy answers, but there are simple answers. We must have the courage to do what is morally right. Winston Churchill said that, "the destiny of man is not measured by material computation. When great forces are on the move in the world, we learn we are spirits—not animals." And he said, "there is something going on in time and space, and beyond time and space, which, whether we like it or not, spells duty."

Duty. A clear, simple concept. A foundational principle.

Your duty is clearly set forth in your oath; your oath to do impartial justice according to the Constitution and the law.

In the past month, you have heard much about the Constitution; and about the law. Probably more than you prefer; in a dizzying recitation of the U.S. Criminal Code: 18 U.S.C. 1503. 18 U.S.C. 1505. 18 U.S.C. 1512. 18 U.S.C. 1621. 18 U.S.C. 1623. Tampering. Perjury. Obstruction. That is a lot to digest, but these are real laws and they are applicable to these proceedings and to this President. Evidence and law, you have seen it and you have heard it.

You have also seen and heard about straw men raised up by the White House lawyers, and then stricken down mightily. You have heard them essentially describe the President alternately as victim or saint. You have heard even his staunchest allies describe his

conduct as "reprehensible." Even some of you, on the President's side of the aisle, have concluded, "there's no question about his having given false testimony under oath and he did that more than once."

There has also been much smoke churned up by the defense.

Men and women of the Senate, Monica Lewinsky is not on trial. Her conduct and her intentions are not at issue here. Vernon Jordan is not on trial and his conduct and his intentions are not at issue here. William Jefferson Clinton is on trial here. His behavior, his intentions, his actions—these and only these are the issues here. When the White House lawyers raise up as a straw man that Vernon Jordan may have had no improper motive in seeking a job for Ms. Lewinsky; or that there was no formal "conspiracy" proved between the President and Vernon Jordan; or that Ms. Lewinsky says she did not draw a direct link between the President's raising the issue of a false affidavit and the cover stories, keep in mind, these are irrelevant issues. When the White House lawyers strike these theories down, even if you were to conclude they did, they are striking down nothing more than irrelevant straw men.

What stands today, as it has throughout these proceedings, are facts—a false affidavit that benefits the President, the coaching of witnesses by the President, the secreting of subpoenaed evidence that would have harmed the President, lies under oath by the President. These reflect President Clinton's behavior; President Clinton's intentions; President Clinton's actions; and President Clinton's benefit. Not through the eyes of false theories; but by the evidence through the lens of common sense.

You have heard tapes and read volumes of evidence. Not pursuant to the process we as House Managers would have preferred, but much evidence, nonetheless, has been presented.

Many are saying, with a degree of certainty that usually comes only from ignorance, that there is nothing I or any of us can say to you today, on the eve of your deliberations, to sway your minds. I beg to differ with them. Moreover, we have been directed by the people of this country, by a majority vote of the House of Representatives, to fulfill and reaffirm a constitutional process and to present evidence to you and argue to you.

There is much, in urging a vote for conviction, that can be gained by turning to, and keeping in mind, President Reagan's words to America, to do duty: duty unclouded by relativism, unmarred by artificiality. Duty that lives on after your vote—just as America will live on and prosper after a vote to convict. Duty untainted by polls. The country's fascination with polls has wormed its way even into these proceedings when, just a few days ago, we heard one of the White House lawyers cite polls as a reason not to release the videotapes.

Polls played no role in the great decisions, decisive decisions that make America a nation and kept it a free and strong nation. Polls likewise played no role in the great trials of our Nation's history that opened schools equally to all of America's children, or that provided due process and equal protection of the laws for all Americans, regardless of economic might or political power.

Yet, it is in many respects polls that threaten to become the currency of political discourse and even of judicial process as we near to enter the 21st century.

Your duty, which I know you recognize today, is and must be based not on polls or politics, but on law and the Constitution. In other words, principle.

What you decide in this case, the case now before you, will tell America and the world what it is we have, as a foundation for our Nation, not just today, but for ages to come. It will tell us and this Nation whether these seats here today will continue to be filled by true statesmen. Whether these seats will continue to echo with the booming principles, eloquence and sense of duty of Daniel Webster, John Calhoun, Everett Dirksen, ROBERT BYRD. I would add to that list of statesmen my fellow Georgian and your former colleague, Sam Nunn, whose concern for duty and our Nation's security caused him recently on CNN to raise grave concerns over our Nation's security because of the reckless conduct of this President. Will the principles embodied in our Constitution and our laws be reaffirmed; wrested from the pallid hands of pollsters and pundits, and from the swarm of theorists surrounding these proceedings? Will they be taken up by you, and placed squarely and firmly back in the hands of Thomas Jefferson, Alexander Hamilton, James Madison, George Washington, Abraham Lincoln, Martin Luther King, Jr., and so many other true statesmen of America's heritage? Principles that have stricken down bigotry, tyrants, and demagogs; principles that, through open and fair trials, have saved the innocent from the hangman's noose; and likewise have sent the guilty, clothed in due process, to then ether regions.

It is principle, found and nurtured in our Constitution and our laws, that you are now called on to both use and reaffirm.

Not only America is watching, the world is, too. And, for those who say people from foreign lands look down on this process and deride this process, I say, "not so."

Let me speak briefly of a man not born in this country, but a man who has made this his country. A man born not in Atlanta, GA, though Atlanta is now his home. A man born many thousands of miles away, in Eritrea. A man to whom President Reagan surely was in a sense speaking, both in 1981 when he spoke of America's eternal sense of duty, and in January 1985, when he spoke of the "American sound" that echoes still through the ages and the continents.

The man whose words I quote is a man who watches this process through the eyes of an immigrant, Mr. Seyoum Tesfaye. I have never met Mr. Tesfaye, but I have read his works. He wrote, in the Atlanta Journal and Constitution, just 3 days ago, on February 5, that this impeachment process "is an example of America at its best . . . a core constitutional principle that profoundly distinguishes America from almost all other nations." He noted without hyperbole, that this process, far from being the sorry spectacle that many of the President's defenders have tried to make it, truly "is a hallmark of representative democracy," reaffirming the principle that "no man is above the law—not even the President."

These are not the words of the House Managers; though they echo ours.

These are not the words of a partisan.

These are the words of an immigrant. A man who came to America to study, and has stayed to work and pay taxes just as millions of us do every day.

Men and women of the United States Senate, you must, by affirming your duty to render impartial justice based on the Constitution and the law, reaffirm those same laws and that very same Constitution, which drew Mr. Tesfaye and countless millions of other immigrants to our shores over the ages. This is not a comfortable task for any of us. But, as Martin Luther King, Jr., correctly noted, in words that hang on my office wall, and perhaps on some of yours, it is not in "times of comfort and convenience" that we find the measure of a man's character, but in times of "conflict and controversy." This is such a defining time.

Obstruction of justice and perjury must not be allowed to stand. Perjury and obstruction cannot stand alongside the law and the Constitution.

By your oath, you must, like it or not, choose one over the other, up or down, guilt or acquittal. I respectfully submit on behalf of the House of Representatives and on behalf of my constituents in the Seventh District of Georgia that the evidence clearly establishes guilt and that the Constitution and laws of this land demand it.

I thank the Members of the Senate and yield to Mr. Manager BUYER.

The CHIEF JUSTICE. The Chair recognizes Mr. Manager BUYER.

Mr. Manager BUYER. Thank you, Mr. Chief Justice.

Mr. Chief Justice, distinguished counsel and Senators, my name is STEVE BUYER, House manager, from Monticello, IN. I represent 20 counties between South Bend and Indianapolis. I will not try to claim the cornerstone of Hoosier common sense. Mr. Kendall would wrestle me for that cornerstone. But as a former criminal defense attorney, I want to take a moment and compliment the White House counsel and Mr. Kendall for doing your best to defend your client in the face of overwhelming facts and compelling evidence.

[Laughter.]

Your role here—a side comment here—your role here is much easier, though, in a Court of Impeachment as opposed to a criminal court of law.

As a former Federal prosecutor, I compliment Chairman HENRY HYDE and my colleagues, the House managers, who have embraced and given life meaning of the rule of law and presented this case to the Senate in a professional, thorough, and dignified manner.

I assure you, the House managers would not have prosecuted the articles of impeachment before the bar of the Senate had we not had the highest degree of faith, belief, and confidence that, based on the evidence, the President committed high crimes and misdemeanors which warrant his removal from office.

As you come to judgment, I recommend you square yourself with your duty first.

On January 7, I witnessed as the Chief Justice administered your oath to do impartial justice according to the Constitution and the laws. You should follow this prescription: Find the truth, define the facts, apply the law, give reverence to the Senate precedents

while defending the Constitution. But I submit, it is the integrity of your oath in which you must regulate to uphold the principle of equal justice under the law.

During the question-and-answer phase with the Chief Justice on Saturday, January 23, I stood in the well of the Senate and recommended that you vote on findings of fact. I want to clear the record of my intent of the recommendation. It has been grossly distorted.

It is not to establish the guilt, as some have alleged. A finding of fact is not a finding of fiction. On the contrary, it is to prevent decisions by triers of fact from basing their judgment on fiction or chance or politics. The Chief Justice ruled that you are triers of fact, and since this constitutional proceeding of impeachment is more like a civil proceeding than a criminal trial, I bring to your attention rule 52 of the Federal Rules of Civil Procedure that provides, in pertinent part, that when a judge sits alone as a trier of fact, he or she is required to set down in precise words the facts as he or she finds them. This requirement is mandatory and cannot be waived by the parties of Federal practice.

A memorandum of findings of fact is not a radical concept to American jurisprudence. It is customary and habitually used in State and Federal courts all across this land. Since you sit collectively as a Court of Impeachment, as the triers of fact, I recommended the findings of fact to guarantee that you have carefully reviewed the evidence and have a rational basis for your final judgment.

To claim that findings of fact is unconstitutional is false. The Supreme Court has consistently permitted the Senate to shape the contours and the due process of an impeachment trial.

The Senate owes the American people and history an accounting of the stubborn facts.

I would like to comment on some statements.

I have heard some Senators state publicly that they are using the standard of beyond a reasonable doubt. But the Senate has held consistently that the criminal standard of proof is inappropriate for impeachment trials. The result of conviction in an impeachment trial is removal from office; it is not meant to punish. You are to be guided by your own conscience, not by the criminal standard of proof of beyond a reasonable doubt.

I have also heard some Senators from both sides of the aisle state publicly, "I think these offenses rise to the level of high crimes and misdemeanors." To state publicly that you believe that high crimes and misdemeanors have occurred, but for some reason you have this desire not to remove the President, that desire, though, does not square with the law, the Constitution, and the Senate's precedents for removing Federal judges for similar offenses.

So long as William Jefferson Clinton is President, the only mechanism to hold him accountable for his high crimes and misdemeanors is the power of impeachment and removal. The Constitution is very clear. You cannot vindicate the rule of law by stating high crimes and misdemeanors have occurred, but leave the President in office subject to future prosecution after his term is expired.

Without respect for the law, the foundation of our Constitution is not secure. Without respect for the law, our freedom is at risk.

The President is answerable for his alleged crimes to the Senate here and now.

Moreover, if criminal prosecution and not impeachment is the way to vindicate the rule of law, then the Senate would never have removed other civil officers such as Federal judges, who are not insulated from criminal prosecution while holding office.

Thus, in providing for criminal punishment after conviction and removal from office, it was the framers who insured that the rule of law would be vindicated both in cleansing the office and in punishing the individual for the criminal act.

I have asked myself many times how allowing a President to remain in office while having committed perjury and obstruction of justice is fair to those across the country who are sitting in jail for having committed the same crimes. I have had the fairness argument thrown into my face consistently.

Fairness is important. Fairness is something that is simple in its nature and is powerful in the statement that it makes. A statement which you send carries us into tomorrow and becomes our future legacy.

If you vote to acquit, think for a moment about what you would say to those who have been convicted of the same crimes as the President.

What would you say to the 182 Americans who were sentenced in Federal court in 1997 for committing perjury?

What would you say to the 144 Americans who were sentenced in Federal court in 1997 for obstruction of justice and witness tampering?

Would you attempt to trivialize the evidence and say, "This case was only about lying about sex"?

I want to cite the testimony before the House Judiciary Committee of one woman who experienced the judicial system in the most personal sense, and that is the testimony of Dr. Barbara Battalino. I think it is compelling.

She held degrees in medicine and law, and Manager ROGAN showed some of the testimony just the other day. You see, she was prosecuted by the Clinton Justice Department and convicted for obstruction of justice because of her lie under oath about one act of consensual oral sex with a patient on VA premises. Her untruthful response was made in a civil suit which was later dismissed. In a legal proceeding, Dr. Battalino was asked under oath: "Did anything of a sexual nature take place in your office on June 27, 1991?"

Her one word reply, "No," convicted her and forever changed her life.

Her punishment? She was convicted of a felony, forced to wear an electronic monitoring device, and is presently on probation. She lost her license to practice medicine and her ability to practice law.

Our prisons hold many who are truly contrite, they are sorry, they feel pain for their criminal offenses, and some whose victims have even forgiven them, others who were very popular citizens and had many friends and apologized profusely, but they were still held accountable under the law.

Just like the President is acclaimed to be doing a good job, many in prison today were doing a good job in their chosen professions. None of our laws provides for good job performance, contrition, forgiveness, or popularity polls as a remedy for criminal conduct.

These were the closing lines of Dr. Battalino's opening statement before the House Judiciary Committee:

> We all make mistakes in life. But, common frailty does not relieve us from our responsibility to uphold the Rule of Law. Regardless, this nation must never let any person or people undermine the Rule of Law. . . . If liberty and justice for all does not reign, we—like great civilizations before us—will surely perish from the face of the earth.

What you would say to Dr. Battalino and others similarly situated is very important because fairness is important.

Alexander Hamilton, writing not long after the Constitution was adopted, well expressed the harm that would come to our Republic from those who, by example, undermine respect for the law. In a statement that bears repeating, Hamilton wrote:

> If it were to be asked, What is the most sacred duty and the greatest source of security in a Republic? The answer would be, an inviolable respect for the Constitution and Laws—the first growing out of the last. . . . Those, therefore, who . . . set examples, which undermine or subvert the authority of the laws, lead us from freedom to slavery; they incapacitate us from a government of laws. . . .

President Clinton, by his persistent and calculated misconduct and illegal acts, has set a pernicious example of lawlessness, an example which, by its very nature, subverts respect for the law. His perverse example inevitably undermines the integrity of both the Office of the President and the judicial process.

You see, ladies and gentlemen, without choice we were all born free, and we inherited a legacy of liberty at great sacrifice by many who have come before us. We cannot collectively as a free people enjoy the liberties without measured personal restraint. And that is the purpose of the rule of law. It is the function of the courts to uphold the dignity of that prescription and the God-given liberties of all of us. That is how we are able to carry this Nation forward in the future generations.

So in light of the historic principles regarding impeachment, the overwhelming evidence to the offenses alleged, and the application of the Senate precedents, I believe it makes it very clear that our President—who has shown such contempt for the law, the dignity and the integrity of the office of the Presidency that was entrusted to him—must be held to account; and it can only be by his removal from office.

The House managers reserve the remainder of our time.

The CHIEF JUSTICE. Very well.

The Chair recognizes the White House counsel.

Mr. Counsel RUFF. Mr. Chief Justice, thank you.

I wonder, Mr. Majority Leader, whether we can take a brief break because there is a need to arrange furniture.

The CHIEF JUSTICE. The Chair recognizes the majority leader.

Mr. LOTT. I was hesitant to suggest it, too, early today, Mr. Chief Justice.

[Laughter.]

RECESS

Mr. LOTT. On the request of counsel, I ask unanimous consent that we take a 10-minute recess. And please return quickly to the Chamber so we can get back to business.

There being no objection, at 2:12 p.m. the Senate recessed until 2:35 p.m.; whereupon, the Senate reassembled when called to order by the Chief Justice.

The CHIEF JUSTICE. The Chair recognizes Mr. White House Counsel Ruff.

Mr. Counsel RUFF. Thank you, Mr. Chief Justice. Mr. Chief Justice, managers of the House, ladies and gentlemen of the Senate, I can't resist beginning, following the lead of my colleagues across the well here, by telling you that my name is Charles Ruff and I am from the District of Columbia, and we don't have a vote in the Congress of the United States.

[Laughter.]

I truly did not intend to begin quite this way, but I must. I do not think there is a court in the land where a prosecutor would be able to stand up for one-third of his allotted time, speak in general terms about what the people are entitled to and what the rule of law stands for—as important as all of that may be—and sit down and turn to the defense counsel and ask that defense counsel go forward, reserving 2 hours for rebuttal. I recognize that procedural niceties have not necessarily characterized the way this trial has gone forward. But I do believe—and this is the only time today I will say this, I promise—that kind of prosecutorial gambit is symptomatic of what we have seen before in these last weeks—wanting to win too much.

That said, let me begin where I intended to begin. We are taking the last steps along a path that, for most of us, has seemed to be unending. Indeed, some of us may have a sense that we have gone well beyond "Yogi Berra land" to deja vu all over again and all over again and all over again. I thought long and hard as I thought about what I was going to say today, and how I could be of most help to you as you make this momentous decision that will soon be entrusted to you. I momentarily considered whether the answer to that question was simply to yield back my time, but I weighed that against the special pleasure of stretching out our last hours with you.

[Laughter.]

Or as Ernie Banks would have said, "It's such a nice day, let's play two."

[Laughter.]

But cursed as I am with lawyerly instincts, I decided to compromise. I promise you as much brevity as I can manage, even if not much wit, while making a few final points that I think you need to carry with you as you go into your deliberations.

You have heard the managers' vision—or at least some part of it—of the process we have been engaged in and the lessons we have learned and what it will look like at the end of our journey. I respect them as elected Representatives of their people and as worthy adversaries. But I believe their vision could be too dark, a vision too little attuned to the needs of the people, too little sen-

sitive to the needs of our democracy. I believe it to be a vision more focused on retribution, more designed to achieve partisan ends, more uncaring about the future we face together.

Our vision, I think, is quite different, but it is not naive. We know the pain the President has caused our society and his family and his friends. But we know, too, how much the President has done for this country. And more importantly, we know that our primary obligation, the duty we all have, is to preserve that which the founders gave us, and we can best fulfill that duty by carefully traveling the path that they laid out for us.

You have heard many speeches over the past few weeks about high crimes and misdemeanors. As I look back on the arguments and the counterarguments, it seems to me that really very little can be gained by repeating them; for when all is said and done, what they mean is this: The framers chose stability. They made impeachment and removal constitutional recourses of last resort. The question that the managers appear to have asked—and I am unable to tell you what they will ask today—is whether perjury or obstruction of justice in the abstract are impeachable offenses. That is not the question you must answer.

Nor must you assume, as the managers appear to, that because judges are removed for having committed perjury, a President must be removed as well. That is not what the rule of law requires. The rule of law and evenhanded justice is something more than a simple syllogism. You must decide whether on these facts arising out of these circumstances this President has so endangered the state that we can no longer countenance his remaining in office.

I think in their hearts the managers do not truly disagree. Whatever they have been able to glean from the historical record or more modern scholarship, they cannot in the end avoid the conclusion that removal of the President is not something that the framers took lightly. Indeed, two of their own witnesses in the Judiciary Committee, Professor Van Alstyne and Judge Wiggins, tried to make it clear to them that even if they were to find that the offenses described in the independent counsel's referral as being committed, another decision had to be made. That decision was whether in the interest of society the President should be impeached. As Professor Van Alstyne put it, in words that I admit are unflattering to my client but nonetheless makes the point: "In my own opinion," he said, "I regard what the President did, that which the Special Counsel report declared, are crimes of such a low order that it would unduly flatter the President by submitting him to trial in the Senate, I would not bother to do it."

I read that statement to you, not obviously because the professor and I are on the same side of the political divide or have the same view of the President's conduct, but because it is important, I think, to understand, as I fear the managers do not, that the framers full well understood what they were doing when they drafted the impeachment provision of the Constitution. They consciously chose not to make all misconduct by the President a basis for removal; they chose instead only that conduct that they viewed as most serious, as most dangerous, to our system of government.

As I said, I think in their hearts the managers recognize the force of it. But they have argued to you that perjury and obstruc-

tion really should be treated as the equivalent of treason and bribery and the danger that they pose to our society. They have offered on this much rhetoric and a few substantive arguments. I want to look at just a few of these arguments as they were advanced in the managers' opening and not really addressed instead.

First, a historical item, that Blackstone in his commentary listed bribery and perjury and obstruction of justice under the same heading of "offenses against public justice"; second, a modern statutory equivalent of that argument that under the sentencing guidelines we actually treat perjury more severely than we do bribery; and, third—this is a theme you have heard throughout these proceedings, what I will call the "system of justice argument"—that the President's conduct, if he is not removed, will somehow subvert enforcement of our civil rights laws.

But all of these arguments are mere subterfuge, offered because the managers knew that to make any plausible case for removal they must bring these articles within the very small circle of offenses that the framers believed were truly dangerous to the state.

First, Blackstone: It is true that the commentaries rate perjury as among 21 offenses against public justice. Notably, however, Blackstone ranks the 21 in order of seriousness, or, as he puts it, "malignity." No. 1 on the list, a most malignant offense, is a felony that I have to admit is unknown to me—that of vacating records. No. 6 is returning from transportation, also an offense rarely seen in our modern society. Nos. 10 and 12 are barratry, maintenance and champerty, especially dear to me because they involve my profession, but rarely viewed these days, I think you will agree. And, at No. 15 is perjury.

If, as Madison told us, Blackstone was in the hands of every man, what does that tell us about why the framers chose treason and bribery and other high crimes and misdemeanors as the grounds of impeachment? It tells us that they fully understood that comparative gravity of offenses against public justice, and, nonetheless, chose only those that truly pose that danger to the state—treason, for obvious reasons, and bribery because to them the risk that the executive would sell himself to a foreign country, for example, was much more than mere speculation. And then other high crimes of similar severity.

As to the lesson to be learned from the more modern day, the sentencing guidelines, Manager MCCOLLUM argued to you a few weeks ago that those to whom you have given the responsibility to assess the comparative severity of crimes have concluded that perjury is at least as serious a crime as bribery. That decision, he told you, is evidenced by the commission's decision to assign perjury an offense level of 12, or approximately 1 year in prison, and to bribery an offense level slightly below that. But even to the extent that such an argument were to be weighed in the constitutional balance, Manager MCCOLLUM was simply not being candid with you, for he failed to explain that under these same guidelines a bribe of, let's say, $75,000 taken by an elected official, or a judge for that matter, automatically carries an offense level of 24, or twice that of perjury, and a prison sentence four to five times longer.

The drafters of our guidelines, to the extent that Mr. MCCOLLUM asked you to look at them, full well understand the special gravity

of bribes taken by the country's leaders, and to distinguish that offense from the offenses, even at best, that are before you now.

Lastly is this system of justice argument—the notion that somehow President Clinton has undermined our civil rights laws. Whatever I might say could not match the eloquence of my colleague, Ms. Mills, and, therefore, I will not attempt fate by venturing further into that territory.

I really do not want to become further immersed in the minutia here. On this, I do agree with the managers. We cannot lose sight of the constitutional forest for some of the analytical trees.

There is only one question before you, albeit a difficult one, one that is a question of fact, and of law and constitutional theory. Would it put at risk the liberty of the people to retain the President in office? Putting aside partisan animus, if you can honestly say that it would not, that those liberties are safely in his hands, then you must vote to acquit.

Each of you has a sense of this in your mind and your heart better than anything I can convey, or I suspect anything better than my colleagues could convey to you. And I will not undertake to instruct you further on this issue.

Just as we ultimately leave that question in your hands, we leave to the conscience of each Member the question of what standard of proof you apply. Despite Congressman BUYER's exhortation to the contrary, this body has never decided for any of you what standard is appropriate or what standard is inappropriate. Each Senator is left to his or her own best judgment.

I suggested to you when I last spoke to you that I believe you must apply a standard sufficiently stringent to enable you to make this most important decision with certainty and in a manner that will ensure that the American people understand that it has been made with that certainty.

This is not an issue as to which we as a people and we as a Republic can be in doubt.

Let me move to the articles. Just as you have listened patiently to our debate about the meaning of "high crimes and misdemeanors," you have, as well, heard seemingly endless discourse about the specific details of the various matters that the managers allege constitute grounds for removal. I will strive, therefore, not to be unduly repetitive more than is at least absolutely necessary.

My colleagues, last Saturday and in their earlier presentations, have done my work for me, but I want to focus for just a little while on those aspects of the managers' presentation that merit your special attention or those that have been particularly elucidated or, for that matter, beclouded by the testimony you heard and watched on Saturday.

As we start this discussion, let me offer you a phrase that I hope you will remember as I move through the articles with you. That phrase is "moving targets and empty pots." "Moving targets," ever-shifting theories, each one advanced to replace the last as it has fallen, fallen victim to the facts. "Empty pots," attractive containers, but when you take the lid off you find nothing to sustain them.

I used the term, "empty vessels," in my opening presentation, but it has since struck me that that was much too flattering and might even suggest that they had the capacity to float, which they don't.

Article I, the first moving target. As we have said repeatedly, we have been more than a little puzzled as to the exact nature of the charges advanced by the managers under the rubric of article I, and our puzzlement has only increased, I must tell you, since this trial began.

We have argued, I think with indisputable force, that both articles are so deficient that they would not survive a motion to dismiss in any court in the land. We are not insensitive to the claim that we are advancing some lawyer's argument, and we are seeking some technical escape, but I urge you not to treat this issue so lightly. As you look to article I, for example, ask yourselves whether you can at this late moment in the trial identify for yourselves with any remote sense of certainty the statements that the managers claim were perjurious.

I suspect you will hear a lot about that in the 2 hours following my presentation, but I will try to look ahead just a bit.

Ask yourselves whether you are comfortable in this gravest of proceedings that when you retire to your deliberations you could ever know that the constitutionally required two-thirds vote is present on any one charge.

We have been making this argument for some time and with some frequency, and so you would think that at least once the trial began the managers would have fixed on some definable set of charges. But, no. Indeed, it struck me even earlier this afternoon that when Manager SENSENBRENNER rose to speak to you, he was prepared to give you four examples of perjury. We have heard a lot of examples. We haven't heard much certainty.

Just to give you an example of how rapidly the target can move, you will recall that in describing the incidents of perjury allegedly committed by the President, the managers made much of the preliminary statement he read to the grand jury, including the use of the words "occasionally," and "on certain occasions" to describe the frequency of certain conduct and made the general allegation that the statement was itself part of a scheme to deceive the grand jury.

Yet, strangely, when Mr. Manager ROGAN was asked about these very charges as late as January 20, he quite clearly abandoned them.

I direct your attention to the exhibits before you and to the charts. Appearing on television on January 20, with Chris Matthews, this is what transpired:

MATTHEWS. . . . now defend these—these elements—one, that the president lied when he said he had had these relationships with her on certain occasions. Is that the language?

Rep. ROGAN. That is the . . .

MATTHEWS. And—and why is that perjurious—perjurious?

Rep. ROGAN. In fact, I'm not—I don't think it's necessarily perjurious. That is—that's one little piece of this answer that he gave at the grand jury. . . .

* * * * *

MATTHEWS. Well, another time he used a phrase with regard to this ridiculous thing called phone sex, he referred to it as occasionally or on occasion. Why do you add them in as part of the perjury indictment?

Rep. ROGAN. That's not added in as part of the perjury indictment in Article I. I simply raised that issue when I was addressing the Senate.

* * * * *

MATTHEWS. You better get to those senators because I think they made the mistake I did of thinking that was one of the elements in the perjury charge.

And similarly over here, although I have reversed the order a bit:

MATTHEWS. . . . Go through what you think are the main elements in your perjury indictment of the president, impeachment. . . .

Rep. ROGAN. One of the things they were focusing on is a point, I think, I made last week when I was presenting the case for perjury dealing with that preliminary statement that the president read that just really gave the grand jury a misperception of what the president's relationship was with Monica Lewinsky. Now I never said that was the basis for the perjury charge. In fact, that's not even one of the four areas that's alleged, but they're trying to pick these little dots out of the matrix and try to hang their hat on that. . . .

I have to tell you, as did Mr. Matthews, I made the same mistake. I heard Manager ROGAN say:

This prepared statement he read to the grand jury on August 17th, 1998, was the linchpin in his plan to "win."

I heard him say:

It is obvious that the reference in the President's prepared statement to the grand jury that this relationship began in 1996 was intentionally false.

I heard him say:

The President's statement was intentionally misleading when he described being alone with Ms. Lewinsky only on certain occasions.

And I heard him say:

The President's statement was intentionally misleading when he described his telephone conversations with Monica Lewinsky as occasional.

That is what I heard when Manager ROGAN spoke to you a few weeks ago.

I know it is unusual to be given a bill of particulars on television, but maybe that is part of the modern litigation age.

So as to article I's charge, now that this is off the books, that the President perjured himself concerning his relationship with Ms. Lewinsky, we are once again left with the claim that he lied about touching, about his denial that he engaged in conduct that fell within his subjective understanding of the definition used in the Jones deposition—this in the course of testimony, Members of the Senate, in which the President had already made the single most devastating admission that any of us can conceive of. It defies common sense. And as any experienced prosecutor—and five experienced prosecutors said this to the Judiciary Committee—will tell you, it defies real world experience to charge anyone, President or not, with perjury on the grounds that you disbelieve his testimony about his own subjective belief in the definition of a term used in a civil deposition.

Nothing in the evidentiary record has changed since the OIC referred this matter to the House 6 months ago. Indeed, it is impossible to conceive what could change in the evidentiary record. And the managers have offered this charge and persist in it for reasons not entirely clear to me, but some blind faith that they must go forward, facts or no.

There are three other elements of article I. First, the allegation that the President lied when he claimed he did not perjure himself in the Jones deposition. The President, of course, made no such representation in the grand jury.

The managers cannot, no matter how they try, resurrect the charges of the article, then, article II, that was so clearly rejected by the House of Representatives. Yet, if you listen to their presentations over the past weeks, it becomes evident that, whether intentionally or unintentionally, they themselves have come to the point where the President's testimony on January 17 in the Jones deposition and August 17 in the grand jury are treated as though they were one and the same.

Just a few minutes ago you heard Manager GEKAS talk to you about perjury, and probably 90 percent of what he talked to you about was perjury in the Jones case—in the Jones case. It doesn't exist anymore. The House of Representatives determined that that was not an impeachable offense. It appears to make no difference, though, that the House rejected this charge, for the managers do continue to dwell on it as though somehow they could show the House from which they came that they made a mistake.

Only last Saturday, Manager GRAHAM could be heard decrying the President's claim that he had never been alone with Monica Lewinsky, something that comes not out of the grand jury but out of the Jones deposition, at the same time he was taking him to task for his disquisition on the word "is," something that is in the grand jury but is entirely irrelevant to these perjury charges. You could even see it in their videotape presentation last Saturday when snippets from January 17, then August 17, were played without any definition and without any sense that there was any distinction between the two events.

There is literally nothing in the President's grand jury testimony that purports to adopt wholesale his testimony in the Jones deposition. If anything, it is evident that he is explaining at length and clarifying and adding to his deposition testimony. Indeed, even if the original article II had survived, the President's belief that he had "worked through the minefield of the Jones deposition without violating the law"—which is a quote from his grand jury testimony—could not allow the managers, somehow, to establish that that statement was independently perjurious, and they surely cannot do so now that the original article II has disappeared.

As to the second and third remaining elements of article I, that the President lied about Mr. Bennett's statement to Judge Wright at the time of the Jones deposition, and that he lied about his own statements to his staff, I will deal with them in my discussion of the obstruction charges in article II. Suffice it to say that nothing in the record as it came to you in January could support conviction on article I, and nothing added to the record since then has changed that result.

Let me move to article II. Manager HUTCHINSON told you in his original presentation that article II rested on—his words—"seven pillars of obstruction." I had suggested in my opening statement of a few weeks ago that it would be more accurate to call them seven shifting sand castles of speculation, but Manager HUTCHINSON has

not proved willing to accept my description and so I will accept his. Let's remove one pillar right at the start.

Article II charges that the President engaged in a scheme to obstruct the Jones case—the Jones case—and alleges as one element of this scheme that in the days following January 21 the President lied to his staff about his relationship with Ms. Lewinsky, conduct that could not possibly have had anything to do with the Jones litigation.

I will get to the merits of that charge standing alone in a little while, but I bring up the more—forgive me—technical argument here, to highlight once more the extent to which the House simply ignored the most basic legal principles in bringing these charges to you. I have yet to hear from the managers a single plausible explanation for the inclusion of this charge as part of a scheme to obstruct the Jones litigation, and I can think of none. I am sure that in the 120 minutes remaining to them, some portion of that time will be spent explaining just this point. And, so, one pillar gone; a slight list observed.

Next: Ms. Lewinsky's affidavit and the first of the empty pots. The managers charge that the President corruptly encouraged a witness to execute a sworn affidavit that he knew to be perjurious, false, and misleading, and similarly encouraged Ms. Lewinsky to lie if she were ever called as a witness. In my opening statement, and in Mr. Kendall's more detailed discussion, we made two points: First, that Ms. Lewinsky had repeatedly denied that she had ever been asked or encouraged to lie; and, second, that there was simply no direct or circumstantial evidence that the President had ever done such a thing.

It is not in dispute that the President called Ms. Lewinsky in the early morning of December 17 to tell her about the death of Betty Currie's brother, and in the same call that he told her that she was now listed on the Jones witness list. The managers have from the beginning relied on one fact and on one baseless hypothesis stemming from this call which, in the managers' minds, was the beginning and the middle and the end of the scheme to encourage the filing of a false affidavit. There is literally no other event or statement on which they can rely.

The one fact to which the managers point is Ms. Lewinsky's testimony that the President said that if she were actually subpoenaed, she possibly could file an affidavit to avoid having to testify, and at some point in the call mentioned one of the so-called cover stories that they had used when she was still working at the White House—that is, bringing papers to him. And it is on this shaky foundation, a very slim pillar indeed, that the managers build the hypothesis.

In the face of the seemingly insurmountable hurdle of Ms. Lewinsky's repeated denials that anyone ever asked or encouraged her to lie, the managers have persisted in arguing, and continue to do so, that the President did somehow encourage her to lie, even if she didn't know it. Now you have heard that theme sounded really for the first time on Saturday, and then a little bit today—even if she didn't know it, because both really understood that any affidavit Ms. Lewinsky would file would have to be false if it were to result in her avoiding her deposition. But neither the fact on which

they rely nor their hypothesis was of much help to the managers before Ms. Lewinsky's deposition and neither, surely, has any force after her deposition.

After you saw Ms. Lewinsky's testimony, there can be nothing left of what was, at best, only conjecture. Even before her deposition, Ms. Lewinsky had testified, as had the President in the grand jury, that given the claims being made in the Jones case, a truthful albeit limited affidavit might—might—establish that Ms. Lewinsky had nothing relevant to offer in the way of testimony in the Jones case.

Faced with this record, the managers asked you to authorize Ms. Lewinsky's deposition, representing that she would—and I quote, and this is from the managers' proffer—"rebut the following inferences drawn by White House counsel on key issues, among others that President Clinton did not encourage Ms. Lewinsky to file a false affidavit and that President Clinton did not have an understanding with Ms. Lewinsky that the two would lie under oath."

Unhappily for the managers—and perhaps their unhappiness was best reflected in the tone of Manager BRYANT's discussion on this subject—Ms. Lewinsky's testimony, as you saw yourself on Saturday, did just the opposite.

In an extended colloquy with Mr. Manager BRYANT on the subject of the affidavit, Ms. Lewinsky made clear, beyond any doubt, first, that the President had never discussed the contents of the affidavit with her; second, that there was no connection between the suggestion that she might file an affidavit and the reference to any cover story; third, that she believed it possible to file a truthful affidavit.

You saw much of this portion of Ms. Lewinsky's deposition on Saturday, and I am not going to impose too much on your patience, but I do want to play just a very few segments of that videotape.

First, two segments dealing with the content of the affidavit.

[Text of videotape presentation:]

Q. Are you, uh—strike that. Did he make any representation to you about what you could say in that affidavit or—

A. No.

Q. What did you understand you would be saying in that affidavit to avoid testifying?

A. Uh, I believe I've testified to this in the grand jury. To the best of my recollection, it was, uh—to my mind came—it was a range of things. I mean, it could either be, uh, something innocuous or could go as far as having to deny the relationship. Not being a lawyer nor having gone to law school, I thought it could be anything.

Q. Did he at that point suggest one version or the other version?

A. No. I didn't even mention that, so there, there wasn't a further discussion—there was no discussion of what would be in an affidavit.

* * * * *

Q. In his answer to this proceeding in the Senate, he has indicated that he thought he had—might have had a way that he could have you—get you to file a—basically a true affidavit, but yet still skirt these issues enough that you wouldn't be called as a witness.

Did he offer you any of these suggestions at this time?

A. He didn't discuss the content of my affidavit with me at all, ever.

Next, a couple of brief segments on the issue of the cover stories.

[Text of videotape presentation:]

Q. Well, based on prior relations with the President, the concocted stories and those things like that, did this come to mind? Was there some discussion about that, or did it come to your mind about these stories—the cover stories?

A. Not in connection with the—not in connection with the affidavit.

* * * * *

Q. Did you discuss anything else that night in terms of—I would draw your attention to the cover stories. I have alluded to that earlier, but, uh, did you talk about cover story that night?

A. Yes, sir.

Q. And what was said?

A. Uh, I believe that, uh, the President said something—you can always say you were coming to see Betty or bringing me papers.

Q. I think You have testified that you're sure he said that that night. You are sure he said that that night?

A. Yes.

Q. Now, was that in connection with the affidavit?

A. I don't believe so, no.

* * * * *

Now, you have testified in the grand jury. I think your closing comments was that no one ever asked you to lie, but yet in that very conversation of December the 17th, 1997 when the President told you that you were on the witness list, he also suggested that you could sign an affidavit and use misleading cover stories. Isn't that correct?

A. Uh—well, I—I guess in my mind, I separate necessarily signing affidavit and using misleading cover stories. So, does—

Q. Well, those two—

A. Those three events occurred, but they don't—they weren't linked for me.

And third, a brief segment on the supposed falsity of any affidavit that might be filed.

[Text of videotape presentation:]

Q. The night of the phone call, he's suggesting you could file an affidavit. Did you appreciate the implications of filing a false affidavit with the court?

A. I don't think I necessarily thought at that point it would have to be false, so, no, probably not. I don't—I don't remember having any thoughts like that, so I imagine I would remember something like that, and I don't, but—

And last, if we might, a brief segment on the question of whose best interests were being served.

[Text of videotape presentation:]

Q. But you didn't file the affidavit for your best interest, did you?

A. Uh, actually, I did.

Q. To avoid testifying.

A. Yes.

Brief, put pointed, I think, and I am sure you remember them from Saturday, and I am sure you will take those excerpts with you as you move into your deliberations.

There was another issue that surfaced early on, although perhaps it has dissipated, and that is whether the President ever saw a draft of Ms. Lewinsky's affidavit, something that the managers alleged early on but, indeed, as we now know from that testimony, not only did nobody ever see a draft of the affidavit, the President and Ms. Lewinsky never even discussed the content of her affidavit. "Not ever," as she put it, either on December 17 or on January 5 or on any other date. According to Ms. Lewinsky, the President told her he didn't need to see a draft because he had seen other affidavits.

Early on, Manager MCCOLLUM speculated for you—speculated for you—that when the President told Ms. Lewinsky that he didn't

need to see her affidavit because he had seen other affidavits, he really must have meant that he had seen previous drafts of hers, and this is what he said:

> I doubt seriously the President was talking about 15 other affidavits of somebody else and didn't like looking at affidavits anymore. I suspect, and I would suggest to you, that he was talking about 15 other drafts of this proposed affidavit, since it had been around the horn a lot of rounds.

That is what Manager MCCOLLUM told you. Now we know that those drafts didn't exist. They never existed. How do we know? Somewhat belatedly, the managers got around to telling us that. In describing the testimony they would expect to receive from Ms. Lewinsky when they moved for the right to take her deposition, they wrote in their motion:

> That same day, January 5, she called President Clinton to ask if the President would like to review her affidavit before it was signed. He declined, saying he had already seen about 15 others. She understood that to mean that he had seen 15 other affidavits rather than 15 prior drafts of her affidavit (which did not exist).

In sum, one, the only reference to an affidavit in the December 17 call was the suggestion of the President that filing one might possibly enable Ms. Lewinsky to avoid being deposed, itself an entirely legitimate and proper suggestion.

Two, the President and Ms. Lewinsky never discussed the content of her affidavit on or after December 17.

Three, the President never saw or read any draft of the affidavit before it was signed.

Four, the President believed that she could file a true affidavit.

Five, Ms. Lewinsky believed that she could file a true affidavit.

Six, there is not one single document or piece of testimony that suggests that the President encouraged her to file a false affidavit.

If there is no proof the President encouraged Ms. Lewinsky to file a false affidavit, surely there must be some proof on the other charge that encouraged her to give perjurious testimony if she were ever called to testify. Well, there isn't.

Let's begin by noting something that should help you assess the President's actions during this period—both the charge that he encouraged the filing of a false affidavit and the charge that he encouraged Ms. Lewinsky to testify falsely.

The conversation that the managers allege gave rise to both offenses is that call of the early morning of December 17. The managers suggest that the President, in essence, used the subterfuge of a call to inform Ms. Lewinsky about the death of Ms. Currie's brother to discuss her status as a witness in the Jones case. Subterfuge? Come on. A tragedy had befallen a woman who was Ms. Lewinsky's friend and the President's secretary.

But let's put this in the managers' own context. On December 6, the President learned that Ms. Lewinsky was on the Jones witness list. According to the managers, that was a source of grave concern and spurred intensified efforts to find her a job—efforts that were still further intensified when, on December 11, Judge Wright issued her order allowing lawyers to inquire into the President's relationships with other women. Yet, I have not heard any explanation as to why the President, now theoretically so distraught that he was urging Mr. Jordan to keep Ms. Lewinsky happy by finding her a job, as Manager HUTCHINSON would have it, waited

until December 17—11 days after he learned Ms. Lewinsky was on the witness list and 6 days after the supposedly critical events of December 11—to call and launch his scheme to suborn perjury.

As to the charge of subornation, the managers do concede, as they must, that the President and Ms. Lewinsky did not even discuss her deposition on the 17th, logically, I suppose, since she wasn't actually subpoenaed until 2 days later.

One might think that this would dispose of the matter, since they do not identify a single other moment in time when there was any discussion of Ms. Lewinsky's potential testimony. But once again, having lifted the lid and seen that their pot was empty, they ask you to find that the same signal that we now know did not encourage the filing of an affidavit was a signal to Ms. Lewinsky to lie if she was ever called to testify. But of course we have long known that there was no such signal. And the grand jury—as was so often the case, one of the jurors took it upon him or herself to ask that which the independent counsel chose not to. You have this before you, and you have seen it before:

A JUROR: It is possible that you also had these discussions [about denying the relationship] after you learned that you were a witness in the Paula Jones case?
[MS. LEWINSKY]: I don't believe so. No.
A JUROR: Can you exclude that possibility?
[MS. LEWINSKY]: I pretty much can. I really don't remember it. I mean, it would be very surprising for me to be confronted with something that would show me different, but I—it was 2:30 in the—I mean, the conversation I'm thinking of mainly would have been December 17th, which was—
A JUROR: The telephone call.
[MS. LEWINSKY]: Right. And it was—you know, 2:00, 2:30 in the morning. I remember the gist of it and I—I really don't think so.
A JUROR: Thank you.

But all of this is not enough to dissuade the managers.

Now that they know that the only two participants in the relevant conversation denied that there was any discussion of either the affidavit or the testimony, they have created still another theory. As Manager BRYANT told you last week—and in essence it was repeated today—"I don't care what was in Ms. Lewinsky's mind."

That is quite extraordinary. The only witness, the supposed victim of the obstruction, the person whose testimony is being influenced, says that it didn't happen. And the managers nonetheless want you to conclude, I assume, that some subliminal message was being conveyed that resulted in the filing of a false affidavit without the affiant knowing that she was being controlled by some unseen and unheard force. I won't comment further. Two more pillars lie in the dust.

Next, the gifts. On this charge, the record is largely, but in critical respects not entirely, as the record has been from the beginning. Here is what it shows.

On the morning of December 28, the President gave Ms. Lewinsky Christmas presents in token of her impending departure for New York. Ms. Lewinsky testified that she raised the subject of her subpoena and said something about getting the gifts out of her apartment, to which she herself has now told you the President either made no response or said something like, "Let me think about it."

Betty Currie testified consistently that Ms. Lewinsky called her to ask her to pick up a box and hold them for her. Ms. Lewinsky

has testified equally consistently, and testified again in her deposition, that it was her recollection that Ms. Currie called her and said that she understood she "had something for her" or perhaps even the President said, "You have something for me." The President denies that he ever spoke to Betty Currie about picking up gifts from Monica Lewinsky. Betty Currie denies that the President ever asked her to pick up gifts from Monica Lewinsky.

Ms. Lewinsky has stated on three occasions before her most recent deposition that Ms. Currie picked up the gifts at 2 o'clock in the afternoon on the 28th. Having been shown the infamous 3:32 cell phone call, which had previously been trumpeted by the managers as absolute proof that it was Ms. Currie who called Ms. Lewinsky, who initiated the process, Ms. Lewinsky testified on Monday that Ms. Currie came to pick up the gifts sometime during the afternoon and that there had been other calls earlier in the day.

But we learned at least a couple of interesting new things from Ms. Lewinsky on this subject.

First, when she received her subpoena on December 19, 9 days—9 days—before she spoke to the President about them, Ms. Lewinsky was frightened at the prospect that the Jones lawyers would search her apartment, and she began to think about concealing the gifts that she cared most about that would suggest some special relationship with the President. And as she told you, she herself decided then that she would turn over only what she described as the most innocuous gifts, and it was those gifts that she took with her to see her lawyer, Mr. Carter, on December 22.

Thus, when she arrived to pick up her Christmas gifts from the President on December 28, she had already decided that she would not turn over all the gifts called for by the subpoena and had already segregated out the ones she intended to withhold. But she didn't tell the President about that. Instead, as she testified, she broached the question of what to do with the gifts and the possibility of giving them to Betty Currie, again without describing what had already occurred, to which the President either made no reply or said something like, "I'll think about it."

This testimony sheds light on one of the issues that has troubled everyone who has tried to make sense out of what happened on that day. Why would the President, if he were really worried about Ms. Lewinsky's turning over gifts pursuant to the subpoena, give her more gifts? From our perspective, the answer has always been an easy one. He wouldn't have been concerned. He has testified that he was not concerned about gifts, that he gives them all the time to all sorts of people, and he wasn't worried about it.

We know that from Ms. Lewinsky's perspective, as she explained in her deposition, it also made no difference that the President was giving her additional gifts, because she had already decided, having had the subpoena in hand for 9 days, that she would not turn them over.

A second ray of light also shines on two aspects of the managers' case from Ms. Lewinsky's deposition.

You may remember that as part of article I in their trial brief, the managers allege that the President lied to the grand jury—this is one of the never-ending list of possible perjuries—that he re-

called saying to Ms. Lewinsky on December 28 that she would have to "turn over whatever she had" when she raised the gift issue with him.

The managers sought to obtain from Ms. Lewinsky testimony that would support that charge of perjury as well as the concealment charge under article II, but she turned that world upside down on both the perjury charge and the obstruction charge.

When asked whether the President had ever said to her, "You will have to give them whatever you have," or something like that, Ms. Lewinsky testified that FBI Agent Fallon of the OIC had interviewed her after the President's grand jury testimony, after they already knew what the President had said under oath, and asked her whether she recalled the President saying anything like that to her. I am sure somewhat to the surprise of Manager BRYANT, she testified that she told Agent Fallon, "That sounds familiar."

Now aside from the not-so-minor point that Ms. Lewinsky's testimony corroborates the President's recollection of his response and undermines the charge in both article I and article II, a couple of other things are worth noting. As my colleague, Ms. Seligman, pointed out to you on Saturday, this was the first time after all Ms. Lewinsky's recorded versions of the events of December 28, that we had ever heard that the President's version sounded familiar to her. And second, there is not a single piece of paper—at least that we are aware of—in the entire universe turned over by the independent counsel, by the House, and thence to us that reflects the FBI's interview of Ms. Lewinsky. If she hadn't been honest enough to tell Manager BRYANT about it, we and you would never have known.

Senators, what else is there in the vaults of the independent counsel or in the memory of his agents that we don't know about?

Another pillar down.

The job search. It may have become tiresome to hear it, but any discussion of the job search must begin with Ms. Lewinsky's testimony oft repeated that no one promised her a job to influence her testimony. Remember my two themes: Moving targets, empty pots. They come together here. What the managers have presented to you in a series of different speculative theories, as each one is shown to be what it is, they move on to the next in the hope they will find one, someday, that actually has a connection to reality. But they cannot find that elusive theory; for the stubborn facts will not budge, nor will the stubborn denials by every participant in their mythical plot.

Now we know that Monica Lewinsky's job search began in the summer of 1997, well in advance of her being involved in the Jones case. In October, she interviewed with U.N. Ambassador Richardson, was offered a job. She had her first meeting with Mr. Jordan early in November, well before she appeared in the Jones case. The next contact was actually before Thanksgiving when she made an effort to set up another meeting with Mr. Jordan and was told to call back after the holiday. She did, on December 8, and set up a meeting on December 11—again, before either she or Mr. Jordan knew that she was involved in the Jones case.

On that date of December 11 which we have heard so much about, Mr. Jordan did open doors for Ms. Lewinsky in New York,

but there was no inappropriate pressure. At American Express and Young & Rubicam she failed on her own, and at Revlon she succeeded on her own. As Mr. Jordan told the grand jury when asked whether there was any connection between his assistance to her and the Jones case, his answer was "unequivocally, indubitably no."

In search of some evidence that Mr. Jordan's efforts were, indeed, triggering Ms. Lewinsky's status as a witness and therefore inappropriate, the managers focused on his January 8 call to Mr. Perelman, the CEO of MacAndrews & Forbes, admittedly a date known to Ms. Lewinsky, to Mr. Jordan, and to the President. Ms. Lewinsky had reported that her original interview had not gone well, although we know it actually had, and that her resume had already been sent over from MacAndrews & Forbes to Revlon where she ultimately was offered a job.

Mr. Jordan was candid stating he went to the top because he wanted to get action if action could be had, but the record is clear that the woman involved at Revlon who interviewed Ms. Lewinsky had already made a decision to hire her. No one put any pressure on her. There was no special urgency. There was no fix. In fact, if you want it known what happens when Mr. Jordan calls the CEO of a company to get action, look at his call to the CEO of Young & Rubicam: No job; no job. They made an independent decision whether or not to hire Ms. Lewinsky.

Other than the managers, there are only two people, as far as I can tell, who ever tried to create a link between the job search and the affidavit: Linda Tripp and Kenneth Starr. No one—not Ms. Lewinsky, not Mr. Jordan, not the President, no one—ever said anything to so much as suggest the existence of such a linkage, and the managers can find no proof; which is not to say they didn't try.

Manager HUTCHINSON, you will recall, originally asked you to look at the events of January 5 when he said Ms. Lewinsky had met with her attorney, Mr. Carter, and then, according to the managers' account, Mr. Carter began drafting the affidavit and Ms. Lewinsky was so concerned that she called the President and he returned her call. The problem with that version, as my colleague, Mr. Kendall, showed you, was the affidavit wasn't drafted until January 6. Mr. Carter has so testified.

The managers would also have you believe that Mr. Jordan was involved in drafting the affidavit and that he was involved in the deletion of language from the draft that suggested that she had been alone with the President. Ms. Lewinsky's and Mr. Jordan's testimony is essentially the same. They talked, Mr. Jordan listened—you recall him saying, "Yes, she was talking, I was doodling,"—he called Mr. Carter, he transmitted to Mr. Carter some of her concerns, but he made it very clear to Ms. Lewinsky he wasn't her lawyer. And in words that will resonate forever, at least among the legal community, Mr. Jordan said, "I don't do affidavits." And, of course, Mr. Carter himself testified it was his idea to delete the language about being alone.

The very best the managers can do on this issue is to establish that Ms. Lewinsky talked to Mr. Jordan in the same conversation about the job search and about her affidavit. But as Mr. Jordan told you, Ms. Lewinsky was always talking about the job search,

and he made it very clear to you that there was no linkage between the two.

If we can play just a very brief section of Mr. Jordan's deposition.

[Text of videotape presentation:]

Q. In your conversation with Ms. Lewinsky prior to the affidavit being signed, did you in fact talk to her about both the job and her concerns about parts of the affidavit?

A. I have never in any conversation with Ms. Lewinsky talked to her about the job, on one hand, or job being interrelated with the conversation about the affidavit. The affidavit was over here. The job was over here.

And of course we have already dispensed with the notion to the extent that the managers continue to assert that the President never discussed the contents of the affidavit with Ms. Lewinsky or even ever saw a draft.

Recognizing that they would never be able to show that the inception of the job search was linked in any way to the affidavit, the managers developed a theory which they have advanced to you that the President committed obstruction of justice when the job search assistance became, in their words, "totally interconnected, intertwined, interrelated," with the filing of Ms. Lewinsky's affidavit.

The problem the managers have had, however, is that they have not been able to figure out when this occurred, why it occurred, or how it occurred. Think back on how many versions of their theory you have heard just in the last few weeks. First, it all started on December 11 when Judge Wright issued her order permitting Jones' lawyers to take depositions to prove that the President had relations with other women. That was what galvanized the President and Mr. Jordan to make real efforts to find Ms. Lewinsky a job.

Woops, didn't quite fit the facts.

Mr. Jordan met with Ms. Lewinsky and made calls to prospective employers before the order was issued. Let's try this. Second, well, it wasn't really the 11th, it was the 5th when the witness list came out. But they had already told you in a trial brief quite explicitly, and in the majority report of the committee to the Congress, that there was "no urgency." Those were their words; there was "no urgency" after December 5. I am a city boy, but that dog went back to sleep.

Third, as Manager HUTCHINSON told you on Saturday, what really happened was that by December 17 the President had "got the job search moving" and thought "maybe she is now more receptive," and that is why he called Ms. Lewinsky on the 17th and told her she was on the witness list.

Nice try. No facts.

I don't know whether this chart, which Manager HUTCHINSON used, was intended to speak for itself or to be elucidated by his own comments, but let's look at it. "December 5th, witness list—Lewinsky," exclamation point. Her name is on it. "December 6: President meets with attorneys on witness list."

True.

"December 7th: President and Jordan meet."

That is also true, but we know they didn't talk about Monica Lewinsky. I am not quite sure why it is there.

"December 8th: Lewinsky sets up a meeting with Jordan for the 11th."

True. At that point, she doesn't know she is on the list and Mr. Jordan doesn't know she is on the list.

"December 11th: Lewinsky job meeting with Jordan."

Yes, true. But as we know, well before Judge Wright's order came out, the two of them still don't know that her name is on the witness list.

December 17th was the calls.

True. They are on the list.

On December 19, the subpoena was served.

True.

"December 28: President and Lewinsky meet; evidence (gifts) concealed."

True, but I am not sure what that means in this context.

Last, interestingly, was breakfast at the Park Hyatt. "More evidence at risk."

It is clear that if you string all of these events together and you have a theory that will link them all together, you have made some progress. There is only one problem: Other than what we know to be true on this list, there is nothing other than surmise that links them together in any fashion that one could consider improper or certainly illegal. But that is, in essence, where the managers have brought us in their theorizing, for their fourth theory is that the pressure did not really begin to build until Ms. Lewinsky was actually subpoenaed and began to prepare an affidavit.

On this theory, a call to Mr. Perelman was the final step—going right to the top of MacAndrews & Forbes to make absolutely sure that Ms. Lewinsky stayed on the team. But here there are other facts with which to deal. For example, look what happened—or more importantly, didn't happen—on December 19. On that day, Monica Lewinsky came, weeping, to Mr. Jordan's office carrying with her the dreaded subpoena. Mr. Jordan called the President and visited with him that evening. And you will recall that they talked in very candid terms to the President about their relationship. Wouldn't one think that if the President was, in fact, engaged in some scheme to use a job in New York to influence Ms. Lewinsky's testimony, this would be the critical moment, that some immediate steps would be taken to be absolutely sure that there was a job for her? But what do we find? Mr. Jordan takes no further action on the job front until January 8.

There was never so much as a passing reference concerning any connection between the job search and the affidavit among any of the three participants—any of them—because there was not one conversation that anyone could conclude was designed to implement this nefarious scheme that the managers would have you find. So now we have an entirely new theory—the "one-man conspiracy," a beast unknown, I think, to Anglo-American jurisprudence.

The fact that Ms. Lewinsky—this is on the managers' theory—didn't know she was on the witness list until December 17, and Mr. Jordan didn't know about it until she was subpoenaed on the 19th, and Mr. Perelman never knew it, all are "proof positive" that the President himself was the "mastermind" pulling on unseen strings

and influencing the participants in this drama, without their even knowing that they were being influenced. Under this theory—the latest in a long line—Ms. Lewinsky's denial that she ever discussed the contents of her affidavit with the President, her denial that there was any connection between the job and her testimony, Mr. Jordan's denial that there was ever a connection between his efforts to find her a job and the affidavit, and the fact that Mr. Jordan never discussed any such connection with the President, are simply evidence of the fact that there must have been such a connection; that unbeknownst to Ms. Lewinsky, she was being corruptly encouraged to file a false affidavit. With all due respect, somebody has been watching too many reruns of "The X-Files."

Confronted with this problem, the managers now offer you one last theory. With ever-increasing directness, they now accuse Mr. Jordan himself of obstructing justice by urging Ms. Lewinsky to destroy her notes. Seemingly, they ask you to find—even in the face of Mr. Jordan's forceful denials—that one who would forget a breakfast at the Park Hyatt until reminded of it by being shown the receipt, and who then admitted his recollection was refreshed and would admit that he remembered a discussion of the notes, must have obstructed justice himself. And, of course, he must have been engaged all along with an effort to influence Ms. Lewinsky's testimony on behalf of the President.

Nonsense. Nonsense. And so this pillar returns to the dust from which it came.

Next, the events surrounding Mr. Bennett's statement to Judge Wright during the Jones deposition formed the basis for two charges: First, that the President obstructed justice in the Jones case; second, that he committed perjury by telling the grand jury that he really wasn't paying attention at the critical moment.

Both charges depend on the managers' ability to prove that, indeed, the President had been paying attention. To do that, they always rely on the videotape of the deposition in which it can be seen that the President was looking in the direction of his lawyer while Mr. Bennett was talking.

But 2 weeks ago, they came to you and they produced, with a modest flourish, a new bit of evidence—an affidavit from Mr. Barry Ward, clerk to Judge Wright, trumpeted, in their words, as "lending even greater credence to their crime." In their memorandum in support of their request to expand the record by including Mr. Ward's affidavit, the managers told you the following, and this is the managers' own language:

> From his seat at the conference table next to the judge, he saw President Clinton listening attentively to Mr. Bennett's remarks, while the exchange between Mr. Bennett and the judge occurred.

Then they said:

> Mr. Ward's declaration would lend even greater credence to the argument that President Clinton lied on this point during his grand jury testimony and obstructed justice by allowing his attorney to utilize a false affidavit in order to cut off a legitimate line of questioning. Mr. Ward's declaration proves that Mr. Ward saw President Clinton listening attentively while the exchange between Mr. Bennett and the presiding judge concurred.

But this is what Mr. Ward's affidavit actually says. The affidavit was attached to the very motion the language of which I just read

to you. I direct your attention only to the last sentence, because this is the only one of any moment: "From my position at the conference table, I observed President Clinton looking directly at Mr. Bennett while this statement was being made."

Search if you will for any evidence relating to whether the President was looking attentively or not. There is not one iota of evidence added by the videotape. You were misled. Indeed, Mr. Ward said to the Legal Times on February 1, 1999, "I have no idea if he was paying attention. He could have been thinking about policy initiatives, for all I know." You were misled.

The record before the affidavit is the record after the affidavit. The managers ask that you remove the President of the United States on the basis of the videotape showing that he was looking in the direction of his lawyer.

It was not much of a pillar to start with.

There is no dispute of the conversation of January 18 between the President and Ms. Currie. There is no dispute that President Clinton called Ms. Currie into the White House on Sunday, January 18, the day after his deposition, and asked her certain questions and made certain statements about his relationship with Ms. Lewinsky. The only dispute is whether, in doing so, the President intended to tamper with a witness. The managers contend that he was corruptly attempting to influence Ms. Currie's testimony. The President denies it.

Since we know that Ms. Currie was not on the Jones witness list at the time of the President's deposition, or at the time of either of the conversations with Ms. Currie, and we know that discovery was about to end, the managers have argued that the President's own references to her in the Jones deposition constituted an invitation to the Jones lawyers to subpoena her. They argue that proof of that invitation can be found in the witness list signed by the Jones lawyers on January 22, which listed Ms. Currie and other potential witnesses.

When I spoke to you on January 19, I told you that Ms. Currie had never been placed on the witness list. I was wrong. Manager HUTCHINSON has quite properly taken me to task for it. But I fear that he became so caught up in this information that he has lost sight of its true significance, or rather a lack thereof.

In order to convince you that Betty Currie was going to be called by the Jones lawyer when the President spoke to her on January 18, the managers, somewhat like Diogenes, lit their lantern and sought out the most reliable witness they could find, a witness whose credibility was beyond question, who had no ulterior motive, no bias—Paula Jones' lawyer. They brought it to you in a form that they hoped would allow his motive and bias to go untested.

Remember how the managers told you that it is important to look a witness in the eye to test his demeanor. I doubt that you need to do that to understand what might color Mr. Holmes' view of the world. Let's look at what he had to say. You have in the exhibits before you an unredacted witness list attached to Mr. Holmes' affidavit. I have put up on the easels the redacted list as it was originally used by the managers a few weeks ago because I really see no purpose in unduly exposing the names of the people

who are on that witness list. But let me direct you to these words just to highlight it: "Under Seal."

You will remember that the President has been criticized for violating a gag order when he spoke to his own secretary about his deposition. What then do we say when the managers produce a document from a lawyer for one of the parties that is still under seal, not yet released by the court, and reveals the names of individuals who are no part of these proceedings? Surely the managers could have made their point just as well without such a revelation.

Mr. Holmes states that the Jones lawyers had two reasons for putting Ms. Currie's name on the witness list: One, because of President Clinton's deposition testimony; and, two, because they had "received what they considered to be reliable information that Ms. Currie was instrumental in facilitating Monica Lewinsky's meetings with Mr. Clinton and that Ms. Currie was central to the cover story Mr. Clinton and Ms. Lewinsky had developed to use in the event their affair was discovered." They don't tell us where he got this reliable information. But of course we know.

Let's figure out whether in fact Betty Currie really made it on the list because of the President's testimony. If you look at the number of times she is mentioned in the deposition, it becomes conventional wisdom that the President inserted her name into his testimony so frequently and so gratuitously that he did in fact invite the Jones lawyers to call her and, thus, must have known that she was going to be a witness when he spoke to her on January 18. But if you look at the deposition, you will find that the first time her name is mentioned, the President is simply responding to a question about his earlier meetings with Ms. Lewinsky and stated that Betty was present.

The lawyers for the plaintiff then asked 13 questions, give or take a few, about Ms. Currie. We know there is no secret here. They got their information from Linda Tripp. And Linda Tripp surely told them about Ms. Lewinsky's relationship with Ms. Currie. It was only in response to a couple of their questions about whether letters had ever been delivered to Ms. Currie and whether she stated at some extraordinarily late hour that the President said, "You'll have to ask her." He did not invite, he did not suggest to them that they call Ms. Currie. They knew, whatever they needed to know about Ms. Currie, to put her on their witness list.

To judge further whether Ms. Currie made it on the list because of the President's invitation, or because they already knew about witnesses from Ms. Tripp, let me direct your attention—if you look at the exhibit in front of you rather than the redacted version here, the first listed on the witness list is No. 165. Her name does not come up at all in the deposition. But we know that she was in fact the subject of conversation surreptitiously recorded between Ms. Tripp and Ms. Lewinsky. And note that the name of Vernon Jordan is not on the list. They are the ones, the Jones lawyers are the ones, who first bring them up. And we know, of course, that they knew from Ms. Tripp that he was already involved in this scenario.

Thus, neither the January 22 witness list nor Mr. Holmes' affidavit supported the managers' theory. The President did not know that Ms. Currie would be a witness when he spoke to her after her

deposition, and he could not, therefore, have tampered with the witness.

Well beyond their statement about how they got this information, Mr. Holmes volunteers that they didn't get it from the Washington Post, or perhaps not. But it is clear that in the days after the Post article, we know that some of the names on the list came from the press reports, we know that Jones lawyers began tracking the newly public activities of the independent counsel, which was issuing its own subpoenas in the hours and days following the lawyers' release. And for some insight into what they believe the independent counsel thought was going on, look at the pleading they filed with Judge Wright on Wednesday, January 28, to prevent the Jones lawyers from continuing to use their investigation as an aid—that is, the independent counsel's investigation—as an aid to civil discovery.

The pleading said, "As recently as this afternoon, plaintiff's counsel caused process to be served on Betty Currie who appeared before the grand jury in Washington yesterday. Such deliberate and calculated shadowing of the grand jury's investigation will necessarily pierce the veil of grand jury secrecy."

The managers have criticized us for ignoring the second conversation between the President and Ms. Currie, suggesting that I suppose it takes on an even more sinister cast than the first. But there is simply nothing of any substance to take from this second conversation that adds to the events of January 18. It is clear that the conversation occurred on Tuesday, January 20, before the Starr investigation became public. The managers disingenuously have suggested in their exhibit, the one they distributed on Saturday, that this conversation occurred after the Post story appeared. If you look at the exhibit that was used on Saturday, you will see: January 20, Post story is known. Of course, that's late at night. January 21, Post story was on the Internet. The President calls Betty for 20 minutes. And then sort of sneaking it in down here, January 20 or 21, President coaches Currie for the second time.

But the record shows this: Ms. Currie has said that the conversation occurred "whenever the President was next in the White House." That is after the Sunday conversation. And that was Tuesday, the 20th, the day after the Martin Luther King holiday. Thus, the second conversation is of no greater legal significance than the first since the President knew no more about Ms. Currie's status as a witness on Tuesday than he did on Sunday.

In sum, the managers have tried to convince you that the President knew or must have known that Betty Currie would be a witness in the Jones case. If anything, we now know that the reason she was put on the January 22 list, along with many others, had more to do with Linda Tripp than anything else.

But putting this aside for the moment; that is, putting aside the question whether the President could have had any reason to believe that Ms. Currie would be a witness, look at whether Ms. Currie herself believed that she was being corruptly influenced on January 18. In response to continuing efforts by the prosecutors to get her to admit that she felt some untoward pressure from the President, she testified—and you have seen this before as well:

. . . did you feel pressured when he told you those statements?

A. None whatsoever.

Q. What did you think, or what was going through your mind about what he was doing?

A. At the time I felt that he was—I want to use the word shocked or surprised that this was an issue, and he was just talking.

* * * * *

Q. That was your impression, that he wanted you to say—because he would end each of the statements with "Rights?," with a question.

A. I do not remember that he wanted me to say "Right." He would say, "Right?" and I could have said, "Wrong."

Q. But he would end each of those questions with a "Right?" and you could either say whether it was true or not true.

A. Correct.

Q. Did you feel any pressure to agree with your boss?

A. None.

So on a human level, we have the President, who has just seen his worst nightmare come true, and who knows that he is about to face a press tidal wave that will wash over him and his family and the country, and we have his secretary who knows of, indeed has been a part of, his relationship with Monica Lewinsky but knows nothing about the long-since ended improper aspects of that relationship—we have a conversation that was the product of the emotions that were churning through the President's very soul on that day. What we do not have is an attempt to corruptly influence the testimony of the witness.

Only one pillar left. The managers ask the Senate to find that the President's conversations with Mr. Blumenthal and other aides was an effort to influence their testimony before the grand jury. Their theory, much as was true of some of their other theories, flounders on shoals that they don't account for. As they would have it, in the days immediately following the Lewinsky story, the President spoke with a few members of his senior staff, as they would allege, knowing that they would probably be grand jury witnesses and misled them about his relationship with Ms. Lewinsky, so that they would convey that misinformation to the grand jury when they were called.

Now, just so that you can see for yourself what the President testified to in the grand jury on the subject, I want to play about 3 or 4 minutes of that testimony for you.

[Text of videotape presentation:]

Q. If they testified that you denied sexual relations or relationship with Monica Lewinsky, or if they told us that you denied that, do you have any reason to doubt them, in the days after the story broke; do you have any reason to doubt them?

PRESIDENT CLINTON. No. The—let me say this. It's no secret to anybody that I hoped that this relationship would never become public. It's a matter of fact that it had been many, many months since there had been anything improper about it, in terms of improper contact. I—

Q. Did you deny it to them or not, Mr. President?

PRESIDENT CLINTON. Let me finish. So, what—I did not want to mislead my friends, but I wanted find language where I could say that. I also, frankly, did not want to turn any of them into witnesses, because I—and, sure enough, they all became witnesses.

Q. Well, you knew they might be——

PRESIDENT CLINTON. And so——

Q.—witnesses, didn't you?

PRESIDENT CLINTON. And so I said to them things that were true about this relationship. That I used—in the language I used, I said, there's nothing going on between us. That was true. I said, I have not had sex with her as I defined it. That was true. And did I hope that I would never have to be here on this day giving this testimony? Of course. But I also didn't want to do anything to complicate this mat-

ter further. So, I said things that were true. They may have been misleading, and if they were I have to take responsibility for it and I'm sorry.

Q. It may have been misleading, sir, and you knew though, after January 21st when the Post article broke and said that Judge Starr was looking into this, you knew that they might be witnesses. You knew that they might be called into a grand jury, didn't you?

PRESIDENT CLINTON. That's right. I think I was quite careful what I said after that. I may have said something to all these people to that effect, but I'll also—whenever anybody asked me any details, I said, look, I don't want you to be a witness or I turn you into a witness or give you information that could get you in trouble. I just wouldn't talk. I, by and large, didn't talk to people about this.

Q. If all of these people—let's leave out Mrs. Currie for a minute. Vernon Jordan, Sid Blumenthal, John Podesta, Harold Ickes, Erskine Bowles, Harry Thomasson, after the story broke, after Judge Starr's involvement was known on January 21st, have said that you denied a sexual relationship with them. Are you denying that?

PRESIDENT CLINTON. No.

Q. And You have told us that you——

PRESIDENT CLINTON. I'm just telling you what I meant by it. I told you what I meant by it when they started this deposition.

Q. You have told us now that you were being careful, but that it might have been misleading. Is that correct?

PRESIDENT CLINTON. It might have been. Since we have seen this four-year, $40-million-investigation come down to parsing the definition of sex, I think it might have been. I don't think at the time that I thought that's what this was going to be about. In fact, if you remember the headlines at the time, even you mentioned the Post story. All the headlines were—and all the talking, people who talked about this, including a lot who have been quite sympathetic to your operation, said, well, this is not really a story about sex, or this is a story about subornation of perjury and these talking points, and all this other stuff. So, what I was trying to do was to give them something they could—that would be true, even if misleading in the context of this deposition, and keep them out of trouble, and let's deal—and deal with what I thought was the almost ludicrous suggestion that I had urged someone to lie or tried to suborn perjury, in other words.

It is clear from that excerpt, I think, that in the hours and days immediately following the release of the Post story, the President was struggling with two competing concerns: How to give some explanation to the men and women he worked with every day, and worked with most closely, without putting them in a position of being grand jury witnesses. But he was not in any sense seeking to tamper with them or to obstruct the grand jury's investigation.

Putting aside for the moment our strenuous disagreement both with the factual underpinning of and the legal conclusions that flow from the managers' analysis of these events, I find it difficult to figure out how it is that they believe the President intended that his statement to Mr. Blumenthal or his statement to Mr. Podesta would involve their conveying false information to the grand jury, or that he sought in some fashion to send that message to the grand jury when, at the very moment that those aides were first subpoenaed, he asserted executive privilege to prevent them from testifying before the grand jury. For someone who wanted Mr. Blumenthal to serve, as the managers would have it, as his messenger of lies, that is strange behavior indeed.

There is an issue here that I don't really want to get into at length, and I, not having heard the last 2 hours of the managers' presentation, don't know whether they are going to get into, and that is Manager GRAHAM's favorite issue, the question of whether there was some scheme to smear Monica Lewinsky—early, middle, or late. Other than to say that no such plan ever existed, I just want to ask the managers this. Although I must admit that for the first time in my life I have heard Marlene Dietrich's name used as

a pejorative—what was Manager BRYANT saying about Ms. Lewinsky? That she was lying? That she misled the managers? That because her testimony helped the President, they were now going to attack her character and her integrity? I don't know how many of you have seen "Witness For The Prosecution," either before or after Mr. BRYANT used that example, but ask yourselves: What was he saying? What was he doing?

Ladies and gentlemen of the Senate, I don't know whether there is a market for used pillars, but they are all lying in the dust.

It is difficult for me as a lawyer, as an advocate for my client, to speak to this body about lofty constitutional principles without seeming merely to engage in empty rhetoric. But I would like to think, I guess, that if there were ever a forum in which I could venture into that realm, be excused for doing so, could be heard without the intervening filter of skepticism that I fear too often lies between lawyer and listener, this is the time and this is the moment. Only once before in our Nation's history has any lawyer had the opportunity to make a closing argument on behalf of the President of the United States and only once before has the Senate ever had to sit in judgment on the head of the executive branch.

We all must cast an eye to the past, looking over our shoulders to be sure that we have learned the right lessons from those who have sat in this Chamber before us. But we also must look to the future, to be sure that we leave the right lessons to those who come after us. We hope that no one will ever have need of them, but if they should, we owe them not only the proper judgment for today but the proper judgment for all time.

You have heard the managers tell you very early on in these meetings that we have advanced a "so what" defense; that we are saying the President's conduct is really nothing to be concerned about; that we should all simply go home and ignore what he has done. And that, of course, to choose a word that would have been familiar to the framers themselves, is balderdash.

If you want to see "so what" in action, look elsewhere. "So what" if the framers reserved impeachment and removal for only those offenses that threaten the state? "So what" if the House Judiciary Committee didn't quite do their constitutional job, if they took the independent counsel's referral and added a few frills and then washed their hands of it? "So what" if the House approved articles that wouldn't pass muster in any court in the land? "So what" if the managers have been creating their own theories of impeachment as they go long? And "so what," and "so what," and "so what?"

By contrast, what we offer is not "so what," but this: Ask what the framers handed down to us as the standard for removing a President. Ask what impeachment and removal would mean to our system of government in years to come. Ask what you always ask in this Chamber: What is best for the country? No, the President wouldn't allow any of us to say "so what," to so much as suggest that what he has done can simply be forgotten. He has asked for forgiveness from his family and from the American people, and he has asked for the opportunity to earn back their trust.

In his opening remarks, Manager HYDE questioned whether this President can represent the interests of our country in the world.

Go to Ireland and ask that question. Go to Israel and Gaza and ask that question. If you doubt whether he should, here at home, continue in office, ask the parent whose child walks safer streets or the men and women who go off to work in the morning to good jobs.

We are together, I think, weavers of a constitutional fabric in which all of us now are clothed and generations will be clothed for millennia to come. We cannot leave even the smallest flaw in that fabric, for if we do, one day someone will come along and pull a thread and the flaw will grow and it will eat away at the fabric around it and soon the entire cloth will begin to unravel. We must be as close to perfect in what we do here today as women and men are capable of being. If there is doubt about our course, surely we must take special care, as we hold the fabric of democracy in our hands, to leave it as we found it, tightly woven and strong.

Before today I wrote down the following: "The rules say that the managers will have the last word." The rules today say the managers will have the last paragraphs. But that truly isn't so, because even when they are finished, theirs will not be the last voices you hear. Yes, one or more of them will now rise and come to the podium and tell you that they have the right of it and we the wrong, that our sense of what the Constitution demands is not theirs and should not be yours. That is their privilege.

But as each of them does come before you for the final time, and as you listen to them, I know that you will hear not their eloquence, as grand as it may be; not the pointed jibes of Manager HUTCHINSON nor the stentorian tones of Manager ROGAN nor the homespun homilies of Manager GRAHAM nor the grave exhortations of Manager HYDE, but voices of greater eloquence than any of us can muster, the voices of Madison and Hamilton and the others who met in Philadelphia 212 years ago, and the voices of the generations since, and the voices of the American people now, and the voices of generations to come. These, not the voices of mere advocates, must be your guide.

It has been an honor for all of us to appear before you in these last weeks on behalf of the President. And now our last words to you, which are the words I began with: William Jefferson Clinton is not guilty of the charges that have been brought against him. He did not commit perjury. He did not commit obstruction of justice. He must not be removed from office.

Thank you very much.

Mr. LOTT addressed the Chair.

The CHIEF JUSTICE. The Chair recognizes the majority leader.

RECESS

Mr. LOTT. Mr. President, I ask unanimous consent we take a 15-minute recess.

There being no objection, at 4:19 p.m. the Senate recessed until 4:41 p.m.; whereupon, the Senate reassembled when called to order by the Chief Justice.

The CHIEF JUSTICE. The Senate will be in order. The Chair recognizes the majority leader.

Mr. LOTT. Mr. Chief Justice, I believe now we are ready to proceed with the managers from the House. I understand that they do

have a 2-hour presentation. I will look for guidance from the Chief Justice about whether we should take a break for the last 45 minutes—that would be after Mr. Manager ROGAN—if at all.

The CHIEF JUSTICE. Very well.

The Chair recognizes Mr. Manager MCCOLLUM.

Mr. Manager MCCOLLUM. Thank you, Mr. Chief Justice and Members of the Senate.

At the outset of my closing remarks, I would like to lay the record straight on a couple of matters. With all due deference to White House counsel, the suggestion that Mr. Ruff made at the beginning of his closing, that we were somehow being unfair to him on the timing today of the rebuttal, seems to me to be a little strained. "Methinks thou doth protest too much," was a remark I used earlier, a quote from Shakespeare, and I think it is appropriate here, too, because if you recall, we had no rebuttal at all as you normally would have in the end of our case, to begin with. Secondly, we thought we ought to have live witnesses here. We haven't had those. The list could go on. I really don't think we are being unfair.

Secondly, I would like to make one correction and make a clear point. I am sure it was not intended, but in your remarks, I believe, Mr. Ruff, you indicated there was no history with regard to "beyond a reasonable doubt" standard. Maybe I misunderstood that, but I want the record to be clear that in the Claiborne case there was, in fact, a vote that took place here in the case of Judge Claiborne, 75–17, saying that that standard did not apply to impeachment cases.

Having said that, I would like to move on to my own thoughts. Notwithstanding the clever and resourceful arguments that White House counsel have made to you today, and in the past few weeks, I suspect that most of you—probably more than two-thirds—believe that the President did, indeed, commit most, if not all, of the crimes he is charged with under these articles of impeachment. I suspect that a great many of you share my view that these are high crimes and misdemeanors.

But nonetheless, it is my understanding that some of you who share these views are not prepared to vote to convict the President and remove him from office. That instead, you are of the mind at the moment—subject to our persuading you otherwise—in your own debate, to acquit him.

Ultimately, the choice is yours, not ours. But I would like to spend a few moments with you reviewing just a few of the facts—not many—and suggesting to you what I believe we managers believe would be some very significant negative consequences of failing to remove this President.

Having heard all of the evidence over the past few days and weeks, there should be little doubt that beginning in December 1997 William Jefferson Clinton set out on a course of conduct designed to keep from the Jones court the true nature of his relationship with Monica Lewinsky. Once he knew he would have to testify, he knew he was going to lie in his deposition. And he knew he was going to have to lie, not only himself but get Monica Lewinsky to lie—if he was going to be successful—and he was going to have to get his personal secretary to lie about his relation-

ship, and have his aides and others help cover them up if he would be successful in lying in the Jones court deposition.

He did all of these things. And then he chose to lie to the grand jury again, because if he did not, he would have not been able to protect himself from the crimes he had already committed.

No amount of arguments by White House counsel can erase one simple fact: If you believe Monica Lewinsky, you cannot believe the President. If you believe Monica Lewinsky, the President committed most of the crimes with which he is charged in these arguments today.

For example, while the President did not directly tell her to lie, he never advised her what to put in her affidavit, she knew from the December 17 telephone conversation with the President that he meant for her to lie about the relationship and file a false affidavit, and he would lie as well.

I want to refresh your recollection. These charts we put up some time before—you have them in front of you. This is a direct quote from her. We showed this on television Saturday, where she was reading from her grand jury deposition and confirming, this is, indeed, what she said and what she—her interpretation of that affidavit, phone conversation, despite everything else you heard.

She said:

> For me, the best way to explain how I feel what happened was, you know, no one asked me or encouraged me to lie, but no one discouraged me either. . . .
> . . . It wasn't as if the President called me and said, "You know, Monica you're on the witness list, this is going to be really hard for us, we're going to have to tell the truth and be humiliated in front of the entire world about what we've done," which I would have fought him on probably. That was different. And by him not calling me and saying that, you know, I knew what that meant. . . .

"I knew what that meant."

She lied in that affidavit. The President, clearly, intended to influence her by suggesting the affidavit and all the other things that went on in that conversation, and all of the circumstances that were there.

Monica Lewinsky was equally clear in her testimony to you Saturday that Betty Currie called her about the gifts, not the other way around. And surely nobody believes that Betty Currie would have called Monica Lewinsky about the gifts on December 28 unless the President had asked her to do so.

Then the day after the President's deposition in the Jones case, the President clearly committed the crimes of witness tampering and obstruction of justice when, in logical anticipation of Betty Currie being called as a witness, he said to Betty Currie: "You were always there when she was there, right? We were never really alone. You could see and hear everything. Monica came on to me and I never touched her, right? She wanted to have sex with me and I can't do that."

I am not going to rehash all of the evidence in this case again, but it is my understanding that some of you may be prepared to vote to convict the President on obstruction of justice and not on perjury. I don't know how you can do that. I honestly don't know how anybody can do that. If you believe Sidney Blumenthal's testimony that the President told him that Monica Lewinsky came at him and made a sexual demand and that he rebuffed her and that she threatened him and said she would tell people they had an af-

fair, and that she was known as a stalker among her peers, surely you must conclude that the President committed perjury when he told the grand jury that he told his aides, including Blumenthal, nothing but the truth, even if misleading.

The exact quotes, people are worried about the exact quotes. What are the words?

> And so I said to them things that were true about this relationship . . . so, I said things that were true. They may have been misleading . . . so, what I was trying to do was to give them something that could—that would be true, even if misleading. . . .

That was played on television in the White House presentation a few minutes ago. That was perjury. What he told Sidney Blumenthal was not true. It wasn't just misleading, it was not true. He knew it was not true and it was perjury in front of the grand jury.

If you believe the President committed the crimes of witness tampering and obstruction of justice when he called Betty Currie to his office the day after his deposition and told her, "You were always there when she was, right"—the ones I just read to you, and the other statements to coach her—surely you must also conclude that the President committed perjury before the grand jury when he told the grand jurors his purpose in making these statements.

These are his exact words to the grand jurors:

> I was trying to figure out what the facts were. I was trying to remember. I was trying to remember every time I had seen Ms. Lewinsky.

That is not true. He knew that was not true. That is not what he was doing. No one can rationally reason that that is what he was trying to do when he made the coaching statements to Ms. Currie. That was perjury in front of the grand jury.

We have heard a lot of talk about the civil deposition. Nobody is trying to prove up that deposition or is lying in here today. Nobody is trying to use that as a duplication or anything else of the sort. But the President said before the grand jurors:

> My goal—

Talking about the Jones case deposition—

> in this deposition was to be truthful . . . .

That is the lie. That is the perjury. That is as simple as the second count of the perjury article is. Does anybody believe, after hearing all of this, that the goal of the President in the Jones deposition was to be truthful? He lied to the grand jury and committed perjury.

Last but not least, if you believe Monica Lewinsky about the acts of a sexual nature that they engaged in, how can you not conclude the President committed perjury when he specifically denied those acts? Those were very explicit. Mr. Ruff suggested that maybe this is a subjective question. Maybe about the interpretation of the definition you might call it subjective. We are not going to go over it again today, but he used specific words that he confirmed were in that definition and said, "I did not do those things. I did not touch those parts." Monica Lewinsky, if you believe her, testified that he did do those things—many times.

He committed perjury when he said he didn't do those things, if you believe Monica Lewinsky. If you are going to vote to convict the President on the articles of impeachment regarding obstruction of justice, I urge you in the strongest way to also vote to convict him on the perjury article as well. I think you would be doing a disservice not to do that, and it would be sending a terrible message about perjury and the seriousness of it for history and to the American people.

As you have seen in the Federal Sentencing Guidelines, which Mr. Ruff talked about a while ago, perjury and obstruction of justice do have, under the baseline guidelines, a higher amount of sentencing than simple, plain "vanilla" bribery does. That is where they start. He is right, you can get enhancements for aggravating circumstances for bribery in certain cases, and you can get a greater sentence. But so can you get a greater sentence for perjury if there was a significant effort to wrongfully influence the administration of justice, for example; and you can get a significantly enhanced sentence for perjury if you committed perjury, and so on.

We didn't choose to bring up a litany and show all the enhancements. Of course, you can do that. But for the pure base, there is no question about it.

The other significant thing that you will recall I brought up—some of us did—a couple of weeks ago is witness bribery. Bribing a witness is treated more severely under sentencing guidelines for base sentencing than ordinary bribery is. Clearly, all three are high crimes and misdemeanors.

What are the consequences of failing to remove this President from office if you believe he committed the crimes of perjury and obstruction of justice? What are the consequences of failing to do that? What is the downside?

First, at the very least, you will leave a precedent of doubt as to whether perjury and obstruction of justice are high crimes and misdemeanors in impeaching the President. In fact, your vote to acquit under these circumstances may well mean that no President in the future will ever be impeached or removed for perjury or obstruction of justice. Is that the record you want?

Second, you will be establishing the precedent that the standard for impeachment and removal of a President is different from that of impeaching or removing a judge or any other official while, arguably—although it never happened—a Federal judge could be removed for the lesser standard under the good behavior clause of the Constitution. Such a removal would have to be by a separate tribunal, by a procedure set by statute, because under the impeachment provisions of the Constitution which all judges have been removed under previously, the same single standard exists for removing the President as for removing a judge. That standard is that you have to have treason, bribery, or other high crimes and misdemeanors.

So while the Constitution on its face does not make a distinction for removing a President or removing a judge, if you vote to acquit, believing that the President committed perjury and obstruction of justice, for all times you are going to set a precedent that there is such a distinction.

Third, if you believe the President committed the crimes of perjury and obstruction of justice and that they are high crimes and misdemeanors, but you do not believe a President should be removed when economic times are good and it is strongly against the popular will to do so, by voting to acquit you will be setting a precedent for future impeachment trials.

Can you imagine how damaging that could be to our constitutional form of government, to set the precedent that no President will be removed from office for high crimes and misdemeanors unless the polls show that the public wants that to happen? Would our Founding Fathers have ever envisioned that? Of course not. Our Constitution was structured to avoid this very situation.

Fourth, what happens to the rule of law if you vote to acquit? What damage is done for future generations by a vote to acquit? Will more witnesses be inclined to commit perjury in trials? Will more jurors decide that perjury and obstruction of justice should not be crimes for which they convict? No military officer, no Cabinet official, no judge, no CEO of a major corporation, no president of a university, no principal of a public school in this Nation would remain in office, no matter how popular they were, if they committed perjury and obstruction of justice as charged here.

To vote to acquit puts the President on a pedestal which says that, as long as he is popular, we are going to treat him differently with regard to keeping his job than any other person in any other position of public trust in the United States of America. The President is the Commander in Chief; he is the chief law enforcement officer; he is the man who appoints the Cabinet; he appoints the judges.

Are you going to put on the record books the precedent that all who serve under the President and whom he has appointed will be held to a higher standard than the President? What legacy to history is this? What mischief have you wrought to our Constitution, to our system of government, to the values and principles cherished by future generations of Americans? All this because—I guess this is the argument—Clinton was elected and is popular with the people? All this, when it is clear that a vote to convict would amount to nothing more than the peaceful, orderly, and immediate transition of government of the Presidency to the Vice President?

William Jefferson Clinton is not a king; he is our President. You have the power and the duty to remove him from office for high crimes and misdemeanors. I implore you to muster the courage of your convictions, to muster the courage the Founding Fathers believed that the Senate would always have in times like these. William Jefferson Clinton has committed high crimes and misdemeanors. Convict him and remove him.

I yield to Mr. CANADY.

The CHIEF JUSTICE. The Chair recognizes Mr. Manager CANADY.

Mr. Manager CANADY. Thank you, Mr. Chief Justice.

Members of the Senate, during the next few minutes I will address the constitutional issue you are called on to decide in this case: Are the crimes charged against the President offenses for which he may be removed from office? Are these crimes high crimes and misdemeanors? Are these crimes that proceed, as Alex-

ander Hamilton said, "from the abuse or violation of some public trust?"

The President's lawyers have argued vigorously that even if all the charges against the President are true, the Constitution forbids the removal of this President. They contend that this isn't even a close case, that the crimes charged against the President are far removed from the constitutional category of high crimes and misdemeanors—a category of offenses they have sought to restrict narrowly to misconduct causing ruinous harm to the system of government.

While the President's lawyers have been consistent in urging a narrow and restricted understanding of the impeachment and removal power, they have not been—and I repeat—they have not been consistent in describing the standard used to determine if high crimes and misdemeanors have been committed.

In their submission to the House of Representatives they stated unequivocally that "the Constitution requires proof of official misconduct for impeachment." Those are their words. I quote them again. "The Constitution requires proof of official misconduct for impeachment." Indeed, that statement was the primary heading for their whole argument on constitutional standards. And likewise, in their trial memorandum submitted to the Senate, they argue that impeachment should not be used to punish private misconduct.

Subsequently, they have apparently abandoned this position, recognizing that it would lead to the absurd result of maintaining in office Presidents who were undoubtedly unfit to serve. They now begrudgingly concede that a President is not necessarily impeached and removed simply because these crimes did not involve the abuse of powers of his office. They have been driven to concede there are at least some circumstances in which a President may be removed for crimes not involving what they call "official misconduct." But, of course, they contend that the circumstances in this case don't even justify consideration of removal.

In the proceedings in the House and in their trial memorandum submitted to the Senate, the President's lawyers made much of the argument that tax fraud by a President of the United States would not be sufficiently serious to justify impeachment and removal. I had mentioned this before in these proceedings, and I mention it again now because it vividly demonstrates the low standard of integrity, the pathetically low standard of integrity that would be established for the Presidency if the arguments of the President's lawyers are accepted by the Senate.

Perhaps I missed something, but I do not recall any mention of the tax fraud issue by the President's lawyers in the course of their various presentations to the Senate. Could it be that the President's lawyers have come to understand that the argument that tax fraud is not an impeachable offense does not strengthen their case, but on the contrary highlights the weakness of their case? Tax fraud by a President, like lying under oath and obstruction of justice by a President in this case, would of course be wrong. It would be shameful, indefensible, unforgivable, but—this is the big "but"—it would not be impeachable, they say; not even a close case. Bad? Yes. But clearly not impeachable. And why that? Why would it not be impeachable? Why is it clearly, unquestionably unimpeachable?

This is the answer. This is the heart and soul of the President's defense. Tax fraud and a host of undefined other crimes, like lying under oath and obstruction of justice in this case, are just not serious enough for impeachment and removal. That is the answer. That is the defense. It is just not serious enough. All the grand legal argument, all the fine legal distinctions come down to this marvelously simple proposition: It is just not serious enough.

Let me refer you once again to a statement from the 1974 Report on Constitutional Grounds for Presidential Impeachment prepared by the staff of the Nixon impeachment inquiry. I want to cite a portion of that report that I have previously cited to you. The President's lawyers have also cited this very same statement in both their trial memorandum and their argument during these proceedings.

This is what the report says:

> Because impeachment of a President is a grave step for the Nation it is to be predicated only upon conduct seriously incompatible with either constitutional form and principles of our government or the proper performance of constitutional duties of the Presidential office. For our purposes now, impeachment is to be predicated only upon conduct seriously incompatible, or the proper performance of constitutional duties of the Presidential office.

That is a standard the managers accept. That is a standard the President's lawyers apparently also accept, and that is a standard I hope all 100 Members of the U.S. Senate can accept. I believe we can reach agreement on this standard. The problem comes, of course, in applying the standard. There is the rub. A wide gulf separates us on how this standard should be applied. The President's lawyers say that under this standard the case against the President isn't even worth considering. The managers argue on the contrary, that a conscientious application of the standard leads to the firm conclusion that the President should be convicted and removed.

Our fundamental difference goes to the issue of seriousness. It all goes back to the claim of the President's lawyers that his offenses just are not serious enough to justify removal.

I think we have agreement that obstruction of justice and lying under oath are incompatible with the proper performance of the constitutional duties of the Presidential office. A President who has lied under oath and obstructed justice has by definition breached his constitutional duty to take care that the laws be faithfully executed.

Such conduct is directly and unambiguously at odds with the duties of this office. So far so good. But here is the real question. Is that conduct seriously incompatible with the President's constitutional duties?

That is the question you all must answer. If you say yes, it is seriously incompatible, you must vote to convict and remove the President. If you say no, you must vote to acquit.

The President's defenders have not offered a clear guide to determining what is serious enough to justify removal. Instead, they have simply sought to minimize the significance of the particular offenses charged against the President.

Today we heard and attempt to minimize the significance of perjury. I was somewhat amazed to hear that. There was no mention

made of what the first Chief Justice of the United States, Justice Jay, had to say about perjury, being of all crimes the most pernicious to society. That was omitted from the President's analysis.

But let me say this: I believe that we should focus on any mitigating circumstances. We should also focus on the aggravating circumstances that relate to the particular facts of a given case. I would like to briefly review the factors advanced at mitigating the seriousness of the President's crimes.

We all know what the leading mitigating factor is. We have all heard this 1,000 times. It goes like this: The offenses are not sufficiently serious because it is all about sex. This is directly linked to the claim that the President was simply trying to avoid personal embarrassment in committing these crimes. The problem with this argument is that it proves too much.

It is very common for people to lie under oath and obstruct justice to do so at least in part to avoid personal embarrassment. People engage in such conduct in their efforts to extricate themselves from difficulty and embarrassing situations. To a large extent, the offenses of President Nixon could be attributed to his desire to avoid embarrassing revelations. Did that reduce his culpability? Did that lessen the seriousness of his misconduct? The answer is obvious. It did not.

The desire to avoid embarrassment is not a mitigating factor. Likewise, the nature of the precipitating misconduct of a sexual affair does not mitigate the seriousness of the President's crimes. If you accept the argument that it is just about sex, you will render the law of sexual harassment virtually meaningless. Any defendant guilty of sexual harassment would obviously have an incentive to lie about any sexual misconduct that may have occurred. But no one—no one—has the license to lie under oath about sex in a sexual harassment case or a divorce case or any other case.

I suggest to you that an objective review of all the circumstances of this case—and you need to look at all of the circumstances, all of the facts in context—will point not to mitigating factors, but to aggravating factors.

The conduct of the President was calculated and sustained. His subtle and determined purpose was corrupt. It was corrupt from start to finish. He knew exactly what he was doing. He knew that it was in violation of the criminal law. He knew that people could go to prison for doing such things. He knew that it was contrary to his oath of office. He knew that it was incompatible with his constitutional duty as President, and he most certainly knew that it was a very serious matter. I am sure he believed he could get away with it, but I am equally sure that he knew just how serious it would be if the truth were known and understood.

He knew all these things. In the midst of it all, he showed not the slightest concern for the honor, the dignity, and the integrity of his high office. When he called Ms. Lewinsky at 2:30 in the morning, he was up to no good, just as my colleague, Mr. GRAHAM, noted. He knew exactly what he was doing. When he called Ms. Currie into his office twice and told her lies about his relationship with Ms. Lewinsky, he knew exactly what he was doing.

When he sent Ms. Currie to retrieve the gifts from Ms. Lewinsky—and that is the only way it happened—he knew exactly

what he was doing. He was tampering with witnesses and obstructing justice. He was doing everything he could to make sure that Paula Jones did not get the evidence that a Federal district judge had determined and ordered that she was entitled to receive. He was doing everything he could to avoid adverse legal consequences in the Jones case. That is what he planned to do, and that is what he did. And to cap it all off, he went before the Federal grand jury and lied.

Whatever you may think about the President's testimony to the grand jury, one thing is clear. He didn't lie to the grand jury to avoid personal embarrassment. The DNA on the dress had ensured his personal embarrassment. There was no avoiding that. There was no way to explain away the DNA. The stakes were higher before the Federal grand jury. This wasn't about avoiding personal embarrassment. This wasn't about avoiding liability in a sexual harassment case. This was a Federal criminal investigation concerning crimes against the system of justice. This was about lying under oath and obstructing justice in the Jones case.

What did he do when he testified to the grand jury? He said anything he thought he needed to say to avoid responsibility for his prior crimes. The prosecutors went down to the White House, and William Jefferson Clinton sat there as President of the United States in the White House and lied to a Federal grand jury. He sat there in the White House, and he put on his most sincere face. He swore to God to tell the truth, and then he lied. He planned to lie, and he executed his plan because he believed it was in his personal and political interests to lie. Never mind the oath of office. Never mind the constitutional duty. Never mind that he solemnly swore to God to tell the truth.

Ask yourself this simple question: Was this course of conduct seriously incompatible with the President's duty as President? If this doesn't fall within the meaning of the offenses Alexander Hamilton described as "proceeding from the abuse or violation of some public trust," tell me what would. I respectfully suggest to you this is exactly the sort of conduct the framers had in mind when they provided a remedy for the removal of the Chief Executive who is guilty of misconduct. I believe they would have rejected the argument that this deliberate, willful, stubborn, corrupt course of criminal conduct just isn't serious enough for the constitutional remedy the framers established, a remedy that they designed to protect the health and integrity of our institutions.

Those who established our Constitution would have understood the seriousness of the misconduct of William Jefferson Clinton. They would have understood that it was the President who has shown contempt for the Constitution, not the managers from the House of Representatives. They would have understood the seriousness of the example of lawlessness he has set. They would have understood the seriousness of the contempt for the law the President's conduct has caused. They would have understood the seriousness of the damage the President has done to the integrity of his high office. Those wise statesmen who established our form of government would have understood the seriousness of the harm President Clinton has done to the cause of justice and constitutional govern-

ment. They would have understood that a President who does such things should not remain in office with his crimes.

Ladies and gentlemen of the Senate, for the sake of justice and for the sake of the Constitution, this President should be convicted and removed.

The CHIEF JUSTICE. The Chair recognizes Mr. Manager BRYANT.

Mr. Manager BRYANT. Thank you, Mr. Chief Justice.

Members of the Senate, the distinguished colleagues of the bar representing the President, I commend them for an outstanding effort they have made throughout these proceedings and tell them that I just read a poll from a couple days ago, that something over 80 percent of the American people believe the President is guilty of something here. But I think that moots our entire debate. I don't think there is any need to even talk about the facts any longer because of the poll.

I use that tongue in cheek because that seems to beg the question that we are also going to talk about today, and that is whether the President ought to be removed for his conduct. One of the arguments I have heard put forward since we have been here is the fact that the polls support this President and that the stability issue would be in play. That is simply not the case because we all clearly understand that it is this body's function to determine not only the facts of this case, but also apply to it the law, as well as the constitutional law, as to the removal and conviction process.

I still remain concerned with opposing counsels' continued reference that the House managers want to win too much. I know I am not that eloquent, but I did try to make that point the other day, and I will make it again. If I have to take an oath to tell the truth, the whole truth, and nothing but the truth, I will do that and tell you we are not trying to win at all costs. This has been a process that I think has been healthy for this country, and regardless of the outcome—it is going to be in your hands very shortly—regardless of the outcome, this country will benefit not only in the short term but in the long term from this debate.

There are many, many other issues at stake here, and I tried to tell you a few the other day, without this concept that all we want to do is win, as if it is a simple game. We have been over the last 4 weeks, as men and women, as ordinary men and women I might say, involved in an extraordinary process. It is uniquely thorough. We have tried to blend the facts of this case with the law of the charges, together with the politics and the polls and the media, and we have had to make some tough decisions. We have had to make some difficult decisions—I know we have on our side—as to what witnesses to call, how to treat these witnesses in depositions. I know on this side they have had to make difficult calls, I am sure. There has been some talk about having the President come down or not come down. What has in large part made this process distinct from past impeachments—and I am talking about the one last century of the President—and the subsequent judicial impeachments has been just, it seems, the media and the daily grind on all of us, the critiques. It is almost as if we are performing, we are in a play, and every day we get a review. We have been good, bad or indifferent.

What concerns me most about that is as you move to the very serious issue of deciding whether or not this President should be convicted based on the facts, and whether this President should be removed, I am concerned that people are stressing the trees. If that is what you see on TV and that is what you read in the paper, you are going to see the trees and not the forest here and miss the big picture.

That is so important. It is not about the personalities of these people or the personalities here or the politics involved or the polls, but it is about the facts. Ladies and gentlemen of the Senate, there are conclusive facts here that support a conviction. The President and his attorneys, as I said the other day, have made a good defense and have tried to paint a picture of the facts I think that simply does not match with logic or common sense.

Take, for instance, the affidavit. We continue to see Ms. Lewinsky testifying on video that she never talked with the President that night about linking the false story, the concocted story with the affidavit. Mr. Ruff, I think, challenged people to say: What do you think the President meant to do that night when he called her at 2:30 in the morning?

What do you think he intended to do in that call at 2:30 in the morning? Do you think he called her to tell her he had a Christmas present for her, or do you think his intent was to tell her, which he did, that you have been listed on the witness list and you could be subpoenaed and you might give an affidavit to avoid testifying. He suggested the affidavit, and then he said in that same conversation: well, you know, you can always use that cover story.

Why would he suggest using a cover story that night? Were they even seeing each other then? It belittles all reasonable judgment to accept this type of defense of this conduct, that it was an innocent phone conversation, the President really meant nothing by it, and the fact that Ms. Lewinsky said: I didn't connect the two. But look at what she did. She went to her lawyer and used that concocted story in an affidavit that she filed in the case.

It was in the draft affidavit. They took that out later for other reasons. But she did tell her lawyer that, and they attempted to use it. Again, it is the President's state of mind that matters and what his intent was on the false affidavit.

Then that same false affidavit was later used in the court, and the President knew it was false. He knew it was false. It was used in the deposition. We have seen the deposition testimony, with the President sitting, listening to his lawyer talk about that affidavit when he submitted it. He obstructed justice by not objecting at that point, not instructing his own lawyer: Don't put that false evidence into this testimony.

People stand up and laugh and say, he was not paying any attention, and they got this silly affidavit from this guy who was there and said he was looking at his lawyer but he couldn't tell what he was thinking. Of course he couldn't tell what he was thinking. Nobody is a mind reader. But this was a critical affidavit at that time which was going to cut off critical testimony in that case, and you can just about guarantee, I would say 100 percent, that the President was indeed listening very carefully, knew that his lawyer was

submitting a false affidavit, and did nothing to stop it. That is another count of obstruction of justice.

Tampering with Betty Currie—two occasions—and they say nothing happened between the first time and the second time. I am not so sure legally that matters. It was 2 or 3 days after it happened the day following his deposition and 2 or 3 days after that. Initially, remember his defense was: I was simply trying to recall what happened. And then we brought up the fact: Why did you go the second time? Did you have a short memory? Didn't you get it right the first time? And now we hear the defense today that nothing really changed and it is really one issue there, one big tampering rather than two attempts to tamper. It is still obstruction of justice.

Mr. HUTCHINSON will talk about the job situation later. Mr. Blumenthal, the same thing; I am sure Mr. ROGAN will talk about him in a minute.

If you will look carefully, you will see that the President is the only thread that goes from each one of these, from the very beginning, from the point when he met Monica Lewinsky and from that point when he looked at that pink pass and said: That's going to be a problem. You know why that was going to be a problem. Because that limited her access to this President and what he was going to do. From that point until they terminated the relationship, this President is involved in each one of these issues of obstruction of justice.

It is always him, by himself, testifying falsely, sitting there letting his lawyers submit a false affidavit, or it is him and one other person—he and Monica Lewinsky talking about filing a false affidavit; he and Monica Lewinsky talking about a concocted story to testify; he and Betty Currie on two occasions. You remember the testimony was like this. He and John Podesta, Sidney Blumenthal, the many aides—talking to them individually, giving them a false story.

As Mr. HUTCHINSON pointed out so well in his argument the other day, it is always a private issue in terms of no one else knows what is going on. Vernon Jordan didn't know what was happening with the affidavit necessarily. Betty Currie didn't understand what was happening with the affidavit, or the job search, to the point that they knew what was going on. Look at and analyze each one of these and you will see there is a compartmentalization going on with this President, and he is at the center of it each time.

What do we do with it? What do you do with it? It is going to be in your hands very shortly, and I want to address just a couple of points on the constitutional issue of the conviction and the removal because White House counsel argued very well the issue of proportionality. Again, proportionality simply means that the legacy of this Senate and this Congress will be that we have destroyed sexual harassment laws. When you argue that proportionality, think about what it is.

We have heard this issue about, "Back in my hometown, 80 percent of the people who get divorced lie about this issue." Certainly we don't want that to be the legacy of this Congress, that we legitimize lying in divorce cases; nor would we want to have the legitimacy of this Congress being that we did not support the sexual

harassment laws, because you know and I know that this is an important part. Going back and getting accurate, truthful testimony is absolutely essential in these types of cases, and if we send a message out on the proportionality theory that it is just about sex and you can lie about it, it will be the wrong thing to do.

The laws, like the facts, are a very stubborn thing. If the law has been broken, if perjury has been committed, if obstruction of justice has been committed by this President, it is my belief that the fact that the economy is good should not prevent this Senate from acting and removing the President. If the economy was bad, you wouldn't want to be able to impeach the President because it is bad; and you don't want to not impeach him simply because the economy is good.

It is a difficult task. We have had a difficult task bringing this case over to you, and I thank you. You have been in attendance the 4 weeks. You paid attention. When it was your turn to ask questions, you asked very good questions. You have been ready to listen, and I thank you for that.

You have a difficult task ahead of you. I know when I voted on this I thought, "If this were a Republican President, what would I do?" It is a tough choice. I said, "But I really think I would have voted the same way I voted even if it were a Republican President." I know. Like Mr. CHABOT, I voted for Mr. Carter in 1976. I voted for Mr. Reagan in 1980, I might add, but I voted for Mr. Carter in 1976 after the 1974 incident.

It is tough. What has made it awfully hard is that you all have also taken an oath to do impartial justice. I simply ask you, as you consider these facts and do impartial justice, that you set a standard that, if you believe the President indeed did commit either perjury or obstruction of justice or both of those, that you set that standard high for the President, for the next President, for the next generations; you set that standard high for our courts that have to deal with perjury and obstruction every day, with people who are less than the President but yet who are watching very closely what we do here. But set that standard high for the President. Don't lower our expectation in what we expect of the President. If you do that, if you look high, if you set the standard high, the right thing will be done.

I have confidence and trust, and I have just been so pleased with the way we have been received here. I know you will do the right thing.

I apologize to you, as I will be talking to you probably for my last time, if I have come across as preaching to you. It is not my intent to lecture you. You do not need any lectures from me or for anyone else to preach to you. I hope I have rebutted some of the proof in the area for which I am in charge. There is conclusive proof here, particularly in terms of the obstruction of justice charges, of the hiding of the evidence, of the filing of a false affidavit.

I did skip over the hiding of the evidence. I am not sure anything new can be added to what was said in the past. But if Monica is telling the truth, as her lawyers or as the President's lawyers seem to tell you, that is a no-brainer, because she says, "I know for a fact that Ms. Currie called me, that she initiated the call." As I told you the other day, from that point forward it seems to me a moot

issue because the initiation of the phone call by Betty Currie began a process to hide that evidence. The only way Betty Currie would have known to make that call to begin that process of hiding evidence would have been a conversation with the President, to have been instructed that way.

For the President, whose intent was to conceal the relationship, it would have been totally inconsistent for him to suggest that she turn the evidence over. It would have been totally consistent for him to ask Betty Currie to get the evidence from Ms. Lewinsky and hide the evidence.

As I close, let me just tell you, too—on the heels of Mr. CANADY—that there are law professors who testified in our hearing who have a contrary view to the view that was expressed by other law professors that Mr. Ruff referred to, that it is constitutional to impeach a President for conduct that is not clearly official, that might be described as personal, particularly conduct of perjury or obstruction of justice.

Professor Turley says:

> In my view, serious crimes in office, such as lying under oath before a federal grand jury, have always been "malum in se" conduct for a president and sufficient for impeachment.

Professor John McGinnis of Benjamin Cardozo Law School says that obstruction of justice is clearly within the ambit of high crimes and misdemeanors.

If there is any question of this private conduct versus personal conduct, that view is out there. Given the right type of personal misconduct, it is clearly an impeachable offense. With that, I call Mr. Manager HUTCHINSON to follow me.

The CHIEF JUSTICE. The Chair recognizes Mr. Manager HUTCHINSON.

Mr. Manager HUTCHINSON. Thank you, Mr. Chief Justice.

Ladies and gentlemen of the Senate, when I was appointed as a manager, I hoped to present the case before the Senate with my colleagues in a manner that was consistent with the dignity of this great body and also respectful of the constitutional independence of the Senate. I hope that you agree and believe that we have done that as we have come over here.

During the months of this trial process, I have grown to appreciate the institution of the Senate to a greater degree than ever before, but I think of even more importance to me, I have grown to respect the individuals that comprise this body more than ever. Let me say, it has been a privilege to appear before you.

As we come to the close of this case, let's go to the key questions that should be on your mind. First of all, has the obstruction of justice and perjury cases been proven? Have the allegations been proven? My colleagues have touched upon the perjury. Let me talk about article II on the obstruction of justice.

The White House defense team, composed of extraordinarily distinguished and talented attorneys, has tried to diminish the significance of the overwhelming facts on obstruction by using certain phrases such as, "It's all circumstantial," or "The managers ignore those stubborn facts," or "They want to win too badly," or "It's a shell with no shell." And today the latest catch phrase, "moving targets, empty pots."

Those are certainly quotable phrases designed to diminish the factual presentation with dripping sarcasm, but I believe that they ignore the underlying facts, testimony, and evidence that has been presented.

Let me just address a couple of arguments that Mr. Ruff has presented during his presentation.

The first argument that he presented as he described it was a technical argument, that the article II obstruction of justice charge in the articles of impeachment on the lying to the aides was not really in reference to the Federal civil rights case, and that is a true statement. But if you read article II, paragraph 7, it refers to this and says:

> . . . The false and misleading statements made by William Jefferson Clinton were repeated by the witnesses to the grand jury, causing the grand jury to receive false and misleading information.

The article is appropriately drafted, is well stated, and gives them total notice as to what that charge is about.

Some of the other arguments have been handled by my colleagues, but Mr. Ruff also said, Why have the managers never, never explained, if this is such an urgent matter for the President, why did he wait until December 17 to tell Ms. Lewinsky that she was on the list?

I am afraid Mr. Ruff failed to listen to my opening presentation when I went through that timeframe. In that timeframe, the witness list came out on December 5, it continued to accelerate, December 11 was Judge Wright's order. Then it was December 17 that the call was made at 2 a.m. in the morning to let Ms. Lewinsky know she was on the list. Why was it December 17? This is in the President's mind. No one knows why he picked that particular date, but perhaps it was that the job search was well underway then. He felt like she could handle this distressing information and, in fact, on the day after that call, she already had two interviews lined up on that same day, December 18, set up by Mr. Jordan. So perhaps it was an appropriate time to let her know she was on the witness list.

They raised the question about the Christmas gifts. You have the testimony of Betty Currie, you have the testimony of Ms. Lewinsky, and the issue is simply: Do you believe Monica Lewinsky? If you accept her reluctant testimony, yet forceful and clear testimony, that the call came from Betty Currie, then you have no choice but to conclude that the retention of the gifts, the retrieval of the gifts was initiated by the President of the United States.

When you go to the job search, and they point to the testimony, they played the video of Mr. Jordan who said that there was never a conversation in which both the job and the false affidavit were discussed together, they cut it off at that point. You remember I had a "but" in there. If you had heard further beyond that, you would have heard me cross-examining Mr. Jordan, as I did, and reminding him of his previous testimony in which he acknowledged that in every conversation with Ms. Lewinsky, they talked about the job. So he acknowledged that they talked about the job and the affidavit all in the same conversation together.

Mr. Ruff makes the point that the managers got close enough to accuse Mr. Jordan of telling Ms. Lewinsky to destroy the notes, im-

plying that we are making this up. But is this evidence that is coming from the managers? It is my recollection that it is testimony coming from Ms. Monica Lewinsky. We are not concocting this. It is testimony from witnesses who have been brought before this body, whose sworn testimony you have received, whose sworn testimony they defended and relied upon, but when it comes to this, they say, "No, it's the managers."

Then they come to another pillar of obstruction, the one they avoid at every opportunity, but finally addressed today, and that is the coaching of Betty Currie. I was interested in the fact that they finally talked about this, the first coaching incident and then the second one. Mr. Ruff tried to go into that it is clear it occurred on January 20 rather than 21. In fact, it is her testimony that it occurred on one of those days. But they miss the point.

The legal significance of the second coaching episode is that it totally goes against the defense of the President—that it was there, he was doing this to acquire information, to get facts, to help in media inquiries.

If that is the case, there is absolutely no reason for it to be done on the second occasion and, clearly, she was known to be a witness at that time, and that is the legal significance.

It goes to his intent, his motive, what he was trying to do to a subordinate employee. The fact of this matter is that this is not a case that is based upon circumstantial evidence. On each element of obstruction, there is direct testimony linking the President to a consistent pattern of conduct designed to withhold information, conceal evidence and tamper with witnesses to avoid obedience and directives of a Federal court.

Let's look at the direct proof, not circumstantial evidence, but direct testimony.

What did Vernon Jordan testify as to the President's involvement in the job search?

Question to Mr. Jordan:

> You're acting in behalf of the President when you're trying to get Ms. Lewinsky a job and you were in control of the job search?

His answer:

> Yes.

He was acting at the direction of the President and he was in control.

What did Vernon Jordan testify he told the President when a job was secured for a key witness and the false affidavit was signed?

> Mr. President, she signed the affidavit, she signed the affidavit.

Then the next day, the job is secured and the report to Betty Currie, the report to the President, "Mission accomplished."

Is this circumstantial evidence? This is direct testimony by a friend and confidante of the President, Vernon Jordan.

Who is the one person who clearly knew all of the ingredients to make the job search an obstruction of justice? It was the President who knew he had a dangerous relationship with Ms. Lewinsky. He knew his friend was securing a job at his direction, and he knew that a false affidavit was being procured at his suggestion. He was the one person who knew all the facts.

Is this circumstantial evidence or direct testimony when Ms. Lewinsky talked about what the President told her on December 17? She was a witness, and immediately following the fact she was a witness, the suggestion that she could use the cover stories, the suggestion that she could use an affidavit.

Direct testimony—was it direct proof about the President's tampering with the testimony of Betty Currie? It was Betty Currie herself who acknowledged this and testified to it. No, this is not circumstantial evidence, it is direct testimony.

The same with Sidney Blumenthal. Direct testimony after direct testimony painting a picture, setting up the pillars of obstruction.

They want you to believe Monica Lewinsky sometimes, but they don't want you to believe her other times, and you have to weigh her testimony.

I could go on with the facts, but the truth is that our case on obstruction of justice has been established. Some of you might conclude, "I accept five or six of those pillars of obstruction, but there is one I have a reservation about." If you look at the article, if there is one element of obstruction that you accept and believe and you agree upon, then that is sufficient for conviction and, surely, it is sufficient to convict the President, if there was even one element of obstruction.

I remind you that a typical jury instruction on conspiracy for obstruction would be that it takes only one overt act to satisfy the requirements for conviction. The Government doesn't have to prove all the overt acts, just one that was carried out.

Another question some of you might be thinking about is, Is this serious enough to warrant conviction and removal? One of the foundations of our judicial system is that any citizen, regardless of position or power, has access to the court. Can you imagine the shock and outrage of this body if a corporation, in an effort to protect itself from liability, concealed evidence and provided benefits to those witnesses who are cooperative? Outrage; injustice. Those are the allegations against the tobacco companies. Those are the allegations last night on CBS, "60 Minutes," about a major corporation. There should be outrage by this body. We would rightfully be outraged about that. And we should also be outraged if it happened by the President. It should be no less when it is conducted by the President.

The next argument is: Yes, the President should be held accountable, but he can always be prosecuted later. In fact, I understand a censure resolution is being circulated emphasizing that the President can be held criminally responsible for his actions when he leaves office. This is not too subtle a suggestion that the independent counsel go ahead and file criminal charges against the President.

I appreciate Judge Starr, but I do not believe that is what the country has in mind when they say they want to get this matter over. I do not believe your vote on the articles of impeachment should be a signal to the independent counsel to initiate criminal proceedings. It appears to me that is the implication of this censure resolution being discussed.

I emphasize that it is this body that the Founding Fathers entrusted with the responsibility to determine whether a President's

conduct has breached the public trust, and your decision in this body should conclude this matter. It should not be the initiation of another national drama that will be carried over the next 3 years.

Finally, there are some who consider the politics of this matter. We have proven our case. I entered this body thinking that this was a legal, judicial proceeding and not political. I have been reminded there are political aspects under the Constitution to a Senate trial. So I concede the point.

We are all familiar with "Profiles in Courage" written by John F. Kennedy. He reminds us of the courageous act of Senator Edmund G. Ross in voting for the acquittal of President Andrew Johnson in his impeachment trial. Senator Ross was a profile in courage because he knew the case against President Johnson was not legally sufficient, even though the politically expedient vote was to vote for conviction. Senator Ross followed the facts and he followed the law, and he voted his conscience. It was to his political detriment, but it reflected his political courage.

Today we have a different circumstance. The question is, Will the Senators of this body have the political courage to follow the facts and the law as did Senator Ross, despite enormous political pressure to ignore the facts and the law and the Constitution? You will make that decision.

I appear before this body as an advocate. I am not paid for this special responsibility. I am here because I believe the Constitution requires me to make this case. The facts prove overwhelmingly that the President committed obstruction of justice and perjury. Despite this belief, whatever conclusion you reach will not be criticized by me. I will respect this institution regardless of the outcome.

As the late Federal Judge Orin Harris of Arkansas always said from the bench to the jury when I was trying cases—and I hated his instruction because I was the prosecutor—but he would tell the jury, "Remember, the government never wins or loses a case. The government always wins when justice is done." This is the Congress and this is the Senate. It is your responsibility to determine the facts and to let justice roll down like mighty waters.

The CHIEF JUSTICE. The Chair recognizes Mr. Manager ROGAN.

Mr. Manager ROGAN. Mr. Chief Justice, distinguished counsel for the President, Members of the U.S. Senate, for me the most poignant part of this entire proceeding was the day, a few weeks ago, when we were addressed by the distinguished former Senator from Arkansas, Dale Bumpers. Probably the thing that touched me most about his presentation is when he talked about the human element of what this impeachment proceeding has meant and how difficult that has been.

It touched me because it made me remember that that difficulty is not limited solely for Democrats in this Chamber. I am one of the House managers. I am a Republican today. But that was not always the case. I used to be a Democrat, and being a House manager in the impeachment of President Clinton has been especially difficult for me. I would like to tell you why.

Twenty years ago, in December 1978, I was finishing my last semester of college and had just applied to law school. I was waiting

for my application to be accepted someplace. And in December of 1978, I was a delegate in Memphis, TN, to the Democratic Midterm Convention.

At that time, President Carter was halfway through his term of office. He was not particularly popular among the party faithful. There was a great deal of sentiment that a Member of this body today should challenge him for the nomination. That decision had not yet been made, but among the delegates to that convention there was an overwhelming desire to see Senator TED KENNEDY appear.

The Carter White House froze Senator KENNEDY out of the proceedings. He was not invited to address the convention. His name appeared nowhere in the program. So the delegates did something on their own. There were workshops being held during the day, and a workshop on health care was called. Senator KENNEDY was invited to fly out that day and address that workshop. He did that in the afternoon, and he left after he addressed it. I had gone to a workshop that morning where President Carter personally appeared, and my recollection is about 200 or 300 people came to that. Senator KENNEDY's workshop had to be transferred to a large auditorium because about 2,000 people appeared to hear him.

The Senator came, he spoke, and he left. I stayed even though most people left with him, because I was fascinated by the young fellow who was moderating the program that day. He was bright, he was in control, he was articulate. He didn't look that much older than me. I was stunned that this young man was not only the attorney general of his State, but he was the Governor-elect of the State.

Sometime after that workshop I walked up to him and introduced myself. I told him who I was, and he spent about 15 minutes encouraging me to go to law school, to stay active in politics. His name was Bill Clinton. I have never forgotten that day 20 years ago when then-Attorney General Clinton took the time for a young fellow who had an interest in the law and politics. I have never forgotten in recent days the graciousness he has shown to me, to my wife, and to my children when we have encountered him.

This has been a very difficult proceeding for me and for my colleagues, the House managers. But our presence here isn't out of personal animosity toward our President. It is because we believe that, after reviewing all the evidence, the President of the United States had committed obstruction of justice and perjury, he had violated his oath of office; and in so doing he had sacrificed the principle that no person is above the law, and friendship and personal affection could not control under those circumstances.

Up until now, the idea that no person is above the law has been unquestioned. Yet this standard is not our inheritance automatically. Each generation of Americans ultimately has to make that choice for themselves. Once again, it is a time for choosing. How will we respond? By impeaching the President? The U.S. House of Representatives made that choice. It went on record as saying that our body would not tolerate the most powerful man in the world trampling the constitutional rights of a lone woman, no matter how obscure or humble she might be.

We refused to ignore Presidential misconduct despite its minimization by spin doctors, pundits, and, yes, even the polls. The personal popularity of any President pales when weighed against the fundamental concept that forever distinguishes us from every nation on the planet: No person is above the law.

The House of Representatives jettisoned the spin and the propaganda. We sought, and we have now presented, the unvarnished truth. Now it is your unhappy task to make the final determination, face the truth, and polish the Constitution, or allow this Presidency, in the words of Chairman HENRY HYDE, to take one more chip out of the marble.

The Constitution solemnly required President Clinton, as a condition of his becoming President, to swear an oath to preserve, protect and defend the Constitution, and to take care that the laws be faithfully executed.

That oath of obligation required the President to defend our laws that protect women in the workplace, just as it also required him to protect the legal system from perjury, abuse of power, and obstruction of justice. Fidelity to the Presidential oath is not dependent upon any President's personal threshold of comfort or embarrassment. Neither must it be a slave to the latest poll.

How important was this oath to our founders? Did they intend the oath to have primacy over the shifting winds of political opinion? Or did they bequeath to us an ambiguous Constitution that was meant to roll with the punches of the latest polling data and focus groups? The Constitution gives us that answer in article II, section 1. It says:

> Before he enters on the execution of his office, he shall take . . . [an] oath.

And the oath is then prescribed.

The mere fact that a person is elected President does not give him the right to become President, no matter how overwhelming his vote margin. Votes alone do not make a person President of the United States. There is a requirement that precedes obtaining the power and authority of obtaining the Presidency. It is the oath of office. It is swearing to preserve, protect, and defend the Constitution. It is accepting the obligation that the laws are to be faithfully executed.

No oath, no Presidency. It is the oath of office, and not public opinion polls, that gives life and legitimacy to a Presidency. This is true no matter how popular an elected President may be, or how broad his margin of victory.

The founders did not intend the oath to be an afterthought or a technicality. They viewed it as an absolute requirement before the highest office in the land was entrusted to any person. The evidence shows the President repeatedly violated his oath of office. Now the focus shifts to your oath of office. The President hopes that in this Chamber the polls will govern. On behalf of the House of Representatives, we entreat you to require the Constitution reign supreme. For if polls matter more than the oath to uphold the law, then yet another chip out of the marble has been struck.

The cry has also been raised that to remove the President is to create a constitutional crisis by undoing an election. There is no constitutional crisis when the simple process of the Constitution

comes into play. Listen to the words of Dr. Larry Arnn of the Claremont Institute:

> [E]lections have no higher standing under our Constitution than the impeachment process. Both stem from provisions of the Constitution. The people elect a president to do a constitutional job. They act under the Constitution when they do it. At the same time they elect a Congress to do a different constitutional job. The president swears an oath to uphold the Constitution, both in elections and in the impeachment process.
>
> If the president is guilty of acts justifying impeachment, then he, not the Congress, will have "overturned the election." He will have acted in ways that betray the purpose of his election. He will have acted not as a constitutional representative, but as a monarch, subversive of, or above, the law.
>
> If the great powers given the president are abused, then to impeach him defends not only the results of elections, but that higher thing which elections are in service, namely, the preeminence of the Constitution[.]

The evidence clearly shows that the President engaged in a repeated and lengthy pattern of felonious conduct—conduct for which ordinary citizens can be and have been jailed and lost their liberty. This simply cannot be wished or censured away.

With his conduct aggravated by a motivation of personal and monetary leverage in the Paula Jones lawsuit, the solemnity of our sacred oath obliges us to do what the President regretfully has failed to do: defend the rule of law, defend the concept that no person is above the law.

On the day the House impeached President Clinton, I said that when they are old enough to appreciate the solemnity of that action, I wanted my little girls to know that when the roll was called, their father served with colleagues who counted it a privilege to risk political fortunes in defense of the Constitution.

Today, I am more resolute in that opinion. From the time I was a little boy, it was my dream to one day serve in the Congress of the United States. My dream was fulfilled 2 years ago. Today, I am a Republican in a district that is heavily Democratic. The pundits keep telling me that my stand on this issue puts my political fortunes in jeopardy. So be it. That revelation produces from me no flinching. There is a simple reason why: I know that in life dreams come and dreams go. But conscience is forever. I can live with the concept of not serving in Congress. I cannot live with the idea of remaining in Congress at the expense of doing what I believe to be right.

I was about 12 years old when a distinguished Member of this body, the late Senator Ralph Yarborough of Texas, gave me this sage advice about elective office:

> Always put principle above politics; put honor above incumbency.

I now return that sentiment to the body from which it came. Hold fast to it, Senators, and in doing so, you will be faithful both to our founders and to our heirs.

The CHIEF JUSTICE. The Chair recognizes Mr. Manager GRAHAM. The managers have 45 minutes remaining.

Mr. Manager GRAHAM. I promise not to take the whole 45 minutes. I have been told that my voice fades, and I will try not to let that happen here.

As we bring the trial to a conclusion, I think it needs to be said from our side of the aisle that our staff has been terrific. You don't know how many hours of sleep have been lost by the young men

and women working to put this case together under the procedures that the Senate developed. They have done an absolutely magnificent job. If there is anybody to blame on our side, blame us, because our staff has done a terrific job. That just needs to be said.

Now, let's talk about Mr. ROGAN's district. True, if there is anybody on our side of the aisle who has been at risk it has been JIM. I have made some lifelong friends in this situation, really on both sides of the aisle. This has been tough, tough, tough for our country, but sometimes some good comes from tough situations, and I think some good will come from this before it is all said and done, ladies and gentlemen of the Senate. I know it doesn't look to be so, but it will be so later on.

I come from a district where I am the first Republican in 120 years. They told me they hanged the other guy, so I know I am doing better. I am 4 years into this thing. This is my third term.

You can take the national polls and turn them upside down in my district, but I have on occasion said that if the President would reconcile himself to the law, I would be willing to consider something less than impeachment. I can assure you that did not go over well with some people in my district. But I thought that would be good for the country.

The elections come and go and we can get through just about anything and everything in this country, but it does take leadership, and character does still count. Having said that, I am a sinner like the rest of us, and part of the problem with this case is we have to confront our own sins, because who are we to judge others when the things get to be private and personal? I am not asking you to use that standard. I am standing before you as a sinner, and I would never want my President or your President removed because of private sins, but only when it gets to be constitutionally out of bounds, only when it gets to be so egregious that you can't look your children in the eye and explain what happened here in terms of the law. We can all explain human failings, but we have a real mixed message going on, and it needs to be straightened out for them.

If you could bring the Founding Fathers back, as everybody has suggested, the first debate would be, could we call them as a witness? There would be some people objecting to that. Live or dead, it has been hard to get a witness.

[Laughter.]

I think they would say to us: "What's a poll?" They would be instructive, but we can't summon them back. Do you know what I really think they would tell us? They would tell us that we started this thing, and it is up to you all to carry it on. And it is. They would be right. It is not their job to tell us what to do. It is our job to take the spirit of what they did and build on it.

If you have kept an open mind, you have fulfilled your job. If you have listened to the facts and you vote your conscience, you will have fulfilled your job. I will not trample on your conscience; I have said that before. I started this process with great concern and I leave with a lot of contentment because I believe the facts have withstood the test of every type of scrutiny and demagoguery that have been thrown at them. They stand firm. Do you know what they are going to stand? They're going to stand the test of history.

Some people suggest that history may judge you badly if you vote to convict this President. I suggest that that will be the least of your problems.

Our past and this present moment become our Nation's future. What are we going to leave to the future generations? What do we do when the next Federal judge is brought before this body having been impeached by the House for cheating on his or her taxes? Are we going to self-righteously throw that Federal judge out after having listened to this massive case of obstruction of justice and perjury before a grand jury? We may throw that Federal judge out, but we will have to walk out the door backward; we will not walk out boldly. What happens when the next Federal judge is acquitted by a jury of his peers, and you know the result would be just to remove that judge? You did the right thing by not being bound by the acquittal in the case of Judge Hastings. You did the right thing to get to the truth and act accordingly, because for people who sit in judgment of others there needs to be no reasonable doubt about who they are and what they are able to do in that role. The President of the United States is at the top of the legal pyramid. If there is reasonable doubt about his ability to faithfully execute the laws of the land, our future will be better off if that individual is removed.

Let me tell you what it all comes down to for me. If you can go back and explain to your children and your constituents how you can be truthful and misleading at the same time, good luck. That is the legacy that Bill Clinton has left all of us if we keep him in office—the idea that "I was truthful but misleading." That scenario focuses around whether or not one type of sex occurred versus the other type of sex. He is wanting you to buy into this definition that was allowed to exist because the wording wasn't quite right. That is the essence of it—"I was truthful, but I was misleading."

Mr. Podesta asked a few more questions than the other people did and the President denied any type of sexual relationship to him. Was he truthful there? Was he truthful in his grand jury testimony? How can you be both? It is just absolutely impossible.

I want to play two clips for you now.

[Text of videotape presentation:]

Q. Now, You have stated, I think, very honestly, and I appreciate, that you were lied to by the President. Is it a fair statement, given your previous testimony concerning your 30-minute conversation, that the President was trying to portray himself as a victim of a relationship with Monica Lewinsky?

A. I think that's the import of his whole story.

Before you put the other tape in, every Member of this body should need to answer this question: Is that a truthful statement? If you believe that the President of the United States is a victim of Ms. Lewinsky, we all owe him an apology. He is not. He is not.

You ask me why I want this President removed? Not only are they high crimes, not only do they rise to the level of constitutional out-of-bounds behavior, not only are they worse than what you remove judges for, they show a tremendous willingness of a national leader to put himself above anything decent and good. I hope that still matters in America.

The next clip:

[Text of videotape presentation:]

Q. Would it be fair to say that you were sitting there during this conversation and that you had previously been told by the President that he was in essence a victim of Ms. Lewinsky's sexual demands, and you said nothing to anyone?

MR. McDANIEL: Is the question, "You said"——

THE WITNESS: I don't——

MR. McDANIEL: Is the question, "You said nothing to anyone about what the President told you?"——

MR. GRAHAM: Right.

THE WITNESS: I never told any of my colleagues about what the President told me.

BY MR. GRAHAM:

Q. And this is after the President recants his story—recounts his story—to you, where he's visibly upset, feels like he's a victim, that he associates himself with a character who's being lied about, and you at no time suggested to your colleagues that there is something going on here with the President and Ms. Lewinsky you need to know about. Is that your testimony?

A. I never mentioned my conversation. I regarded that conversation as a private conversation in confidence, and I didn't mention it to my colleagues, I didn't mention it to my friends, I didn't mention it to my family, bedsides my wife.

Q. Did you mention it to any White House lawyers?

A. I mentioned it many months later to Lanny Breuer in preparation for one of my grand jury appearances, when I knew I would be questioned about it. And I certainly never mentioned it to any reporter.

Ladies and gentlemen of the Senate, I have asked you several times to vote your conscience, and I will not step on it if you disagree with me; but I have always said let us tell the story about what happened here. I am saying it again. Ladies and gentlemen, we need to get to the truth, nothing but the truth, the whole truth, and let the chips fall where they may.

Let me say this about being truthful but misleading. Can you sit back as the President, after you told a lie to a key aide, where you portrayed yourself as a victim, and watch the press stories role out along the lines that "she wears her dresses too tight"; "she comes from a broken home"; "she's a stalker"; "she's sex obsessed"; can you sit back and watch all that happen and still be truthful but misleading?

We have laws against that in this country. We have laws in this country that even high Government officials cannot tell a lie to somebody knowing that lie will be repeated to a grand jury. That is exactly what happened here. He portrayed himself as a victim, which is not a misleading statement; it is a lie because if you knew the truth, you wouldn't consider him a victim. And that lie went to the Federal grand jury. And those citizens were trying very hard to get it right, and he was trying very hard to mislead them. At every turn when they tried to get to the truth, he ran the other way, and he took the aura of the White House with him.

If you believe he is a victim, then you ought to acquit him. If you believe he has lied, then he ought not to be our President.

There are two things in this case that are crimes, two aspects of it—before the Paula Jones deposition and after the Paula Jones deposition. I am going to leave this with you for the very last time. The affidavit was an attempt to have a cover story where both of them could lie and go on about their lives. The job search was to take somebody who had been friendly and get them a job so they could go on about their lives someplace else, and get this matter behind them and conceal from a court the truth. Those things are crimes.

These gifts being under the bed of Betty Currie, the President's secretary, is no accident. They didn't walk over there by themselves. They got conveyed by a secretary after she picked them up from his consensual lover. People have figured that part out. It is no accident that happened. That is a crime—when you are subpoenaed to give those gifts.

But it is still about getting her a job and having a cover story so she could go on with her life. But when the article came out on January 21, the whole flavor of this case changed. I don't know how you are going to explain it to yourself or others, but I want to lay out to you what I think happened based on the evidence.

That January 21 when the story broke that she may have been telling what went on, and the President was faced with the idea that the knowledge of their relationship was out in the public forum, what did he do then? There were no more nice jobs using a good friend. There was no more "Let's see if we can hide the gifts and play hide the ball." Do you know what happened then? He turned on her. Not my favorite part of the case—it is the most disgusting part of the case. It is part of the case that history will judge. The crimes change. They become more ominous, because the character traits became more ominous. The young lady who was the stalker, who was sex-obsessed, who wore her skirts too tight, that young lady was being talked about openly in the public. That young lady was being lied about to the Federal grand jury. And the truth is that young lady fell in love with him. And probably to this day a 24- or 25-year-old young girl doesn't want to believe what was going to come her way. But you all are adults. You all are leaders of this Nation. For you to look at these facts and conclude anything else would be an injustice, because without that threat, ladies and gentlemen, the stories were going to grow in number, and we would have no admissions of "misleading" and "truthful."

The White House is the bully pulpit. But it should never be occupied by a bully. The White House will always be occupied by sinners, including our Founding Fathers, and future occupants.

What we do today will put a burden on the White House and the burden on our future, one way or the other. Is it too much of a burden to say to future Presidents, Don't fabricate stories in front of a grand jury, don't parse words, don't mislead, don't lie when you are begged not to? Is it too much to say to a President, If you are ever sued, play it straight; don't hide the gifts under the bed, don't give people false testimony, don't try to trash people who are witnesses against you? If that is too much of a burden to put on the White House, this Nation is in hopeless decline. It is not too much of a burden, ladies and gentlemen. It is only common decency being applied to the occupant of the White House.

To acquit under these facts will place the burden on the constitutional process of impeachment and how we deal with others, Federal judges and other high public officials. That, I suggest to you, will be almost irreconcilable.

I want my country to go boldly into the next century. I don't want us to limp into the next century. I don't want us to crawl into the next century regardless of rule of law. No matter what you do, we will make it. But the difference between how you vote here, I

think, determines whether we go boldly with the rule of law intact, or whether we have to explain it for generations to come.

I leave with you an example that I think says much. General MacArthur was removed by President Truman, a very popular fellow at the time. The reaction to the MacArthur dismissal was even more violent than Truman had expected. And for an entire year the majority of public opinion ranked itself ferociously against him. He said characteristically, as he felt that hostile poll, "I wonder where Moses would have gone if they had taken a poll in Egypt. And what would Jesus Christ have preached if they had taken a poll in the land of Israel? It isn't polls that count. It is right and wrong and leadership of men with fortitude, honesty, and the belief in the right that make epics in the history of the world."

Ladies and gentlemen of the Senate, thank you for listening. If you have any doubts about whether this President has committed high crimes, we need to make sure the Senate itself has told the truth. Don't leave any doubts lingering, because the evidence is overwhelming that these offenses occurred. The crime of perjury and obstruction of justice have traditionally been high crimes under our Constitution. For God's sake, let it remain so. And let it be said that no President can take the Presidency and the bully pulpit of the Presidency and hurt average citizens from it.

Thank you very much. I yield now to our chairman.

The CHIEF JUSTICE. The Chair recognizes Mr. Manager HYDE.

Mr. Manager HYDE. Mr. Chief Justice, learned counsel, and the Senate, we are blessedly coming to the end of this melancholy procedure. But before we gather up our papers and return to the obscurity from whence we came—

[Laughter.]

—permit, please, a few final remarks.

First of all, I thank the Chief Justice not only for his patience and his perseverance but for the aura of dignity that he has lent to these proceedings. It has been a great thrill for me to be here in his company, as well as in the company of you, distinguished Senators.

Second, I compliment the President's counsel. They have conducted themselves in the most professional way. They have made the most of a poor case, in my opinion. There is an old Italian saying—and it has nothing to do with the lawyers, but to your case—that "you may dress the shepherd in the silk, he will still smell of the goat."

[Laughter.]

But all of you are great lawyers. It has been an adventure being with you.

You know, the legal profession, like politics, is ridiculed pretty much. Every lawyer feels that and understands the importance of the rule of law, to establish justice, to maintain the rights of mankind, to defend the helpless and the oppressed, to protect innocents, to punish the guilty. These are duties which challenge the best powers of man's intellect and the noblest qualities of the human heart. We are here to defend the bulwark of our liberty, the rule of law.

As to the House managers, I want to tell you and our extraordinary staff how proud I am of your service. For myself, I cannot

find the words to adequately express how I feel. I must use the inaudible language of the heart. I have gone through it all by your side—the media condemnation, the patronizing editorials, the hate mail, the insults hurled in public, the attempts at intimidation, the death threats, and even the disapproval of our colleagues, which cuts the worst.

You know, all a Congressman ever gets to take with him when he leaves this building is the esteem of his colleagues and his constituents—and we have risked even that for a principle, for our duty, as we have seen it.

In speaking to my managers, of whom I am interminably proud, I can borrow the words of Shakespeare, "Henry V," as he addressed his little army of longbowmen before the Battle of Agincourt. And he said:

We few, we happy few, we band of brothers
For he that sheds his blood with me
Shall be my brother
And gentlemen in England, now abed
shall think themselves accursed they
were not here
And hold their manhood cheap
while any speaks
That fought with us upon St. Chrispen's day

As for the juror judges, you distinguished Senators, it is always a victory for democracy when its elected representatives do their duty, no matter how difficult and unpleasant, and we thank you for it. Please don't misconstrue our fervor for our cause to any lack of respect or appreciation for your high office. But our most formidable opponent has not been opposing counsel nor any political party; it has been the cynicism, the widespread conviction that all politics and all politicians are, by definition, corrupt and venal.

That cynicism is an acid eating away at the vital organs of American public life. It is a clear and present danger, because it blinds us to the nobility and the fragility of being a self-governing people.

One of the several questions that needs answering is whether your vote on conviction lessens or enlarges that cynicism. Nothing begets cynicism like the double standard—one rule for the popular and the powerful and another for the rest of us.

One of the most interesting things in this trial was the testimony of the President's good friend, the former Senator from Arkansas. He did his persuasive best to maintain the confusion that this is all about sex. Of course, it is useful for the defense to misdirect our focus to what everyone concedes are private acts and none of our business. But if you care to read the articles of impeachment, you won't find any complaints about private sexual misconduct. You will find charges of perjury and obstruction of justice which are public acts and Federal crimes, especially when committed by the one person duty bound to faithfully execute the laws. Infidelity is private and noncriminal. Perjury and obstruction are public and criminal. The deliberate focus on what is not at issue here is a defense lawyer's tactic and nothing more. This entire saga has been a theater of distraction and misdirection, time-honored defense tactics when the law and the facts get in the way.

One phrase you have not heard the defense pronounce is the "sanctity of the oath." But this case deeply involves the efficacy, the

meaning, and the enforceability of the oath. The President's defenders stay away from the word "lie," preferring "mislead" or "deceive." But they shrink from the phrase "sanctity of the oath," fearing it as one might a rattlesnake.

There is a visibility factor in the President's public acts, and those which betray a trust or reveal contempt for the law are hard to sweep under the rug, or under the bed, for that matter. They reverberate, they ricochet all over the land, and provide the worst possible example for our young people. As that third-grader from Chicago wrote to me, "If you can't believe the President, who can you believe?"

Speaking of young people, in 1946 a British playwright, Terrance Rattigan, wrote a play based on a true experience that happened in England in 1910. The play was called "The Winslow Boy." The story—as I say, a true story—involved a young 13-year-old lad who was kicked out of the Royal Naval College for having forged somebody else's signature on a postal money order. Of course, he claimed he was innocent, but he was summarily dismissed and his family, of very modest means, could not afford legal counsel, and it was a very desperate situation. Sir Edward Carson, the best lawyer of his time—barrister, I suppose—got interested in the case and took it on pro bono and lost all the way through the courts.

Finally, he had no other place to go, but he dug up an ancient remedy in England called "petition of right." You ask the King for relief. And so Carson wrote out five pages of reasons why a petition of right should be granted and, lo and behold, it got past the Attorney General, it got to the King. The King read it, agreed with it, and wrote across the front of the petition, "Let right be done. Edward VII."

I have always been moved by that phrase. I saw the movie; I saw the play; and I have the book. And I am still moved by that phrase, "Let right be done." I hope when you finally vote that will move you, too.

There are some interesting parallels to our cause here today. This Senate Chamber is our version of the House of Lords, and while we managers cannot claim to represent that 13-year-old Winslow boy, we speak for a lot of young people who look to us to set an example.

Ms. Seligman last Saturday said we want to win too badly. This surprised me because none of the managers has committed perjury nor obstructed justice and claimed false privileges, none has hidden evidence under anyone's bed nor encouraged false testimony before the grand jury. That is what you do if you want to win too badly.

I believe it was Saul Bellow who once said, "A great deal of intelligence can be invested in ignorance when the need for illusion is great." And those words characterize the defense in this case. "The need for illusion" is very great.

I doubt there are many people on the planet who doubt the President has repeatedly lied under oath and has obstructed justice. The defense spent a lot of time picking lint. There is a saying in the courts, I believe, that equity will not stoop to pick up pins. But that was their case. So the real issue doesn't concern the facts, the stubborn facts, as the defense is fond of saying, but what to do about them.

I am still dumbfounded about the drafts of the censures that are circulating. We aren't half as tough on the President in our impeachment articles as this draft is that was printed in the New York Times:

An inappropriate relationship with a subordinate employee in the White House which was shameless, reckless and indefensible.

I have a problem with that. It seems they are talking about private acts of consensual sexual misconduct which are really none of our business. But that is the leadoff.

Then they say:

The President deliberately misled and deceived the American people and officials in all branches of the U.S. Government.

This is not a Republican document. This is coming from here.

The President gave false or misleading testimony and impeded discovery of evidence in judicial proceedings.

Isn't that another way of saying obstruction of justice and perjury?

The President's conduct demeans the Office of the President as well as the President himself and creates disrespect for the laws of the land. Future generations of Americans must know that such behavior is not only unacceptable but bears grave consequences including loss of integrity, trust and respect.

But not loss of job.

Whereas, William Jefferson Clinton's conduct has brought shame and dishonor to himself and to the Office of the President; whereas, he has violated the trust of the American people—

See Hamilton's Federalist No. 65—

he should be condemned in the strongest terms.

Well, the next to the strongest terms. The strongest terms would remove him from office.

Well, do you really cleanse the office as provided in the Constitution or do you use the Airwick of a censure resolution? Because any censure resolution, to be meaningful, has to punish the President, if only his reputation. And how do you deal with the laws of bill of attainder? How do you deal with the separation of powers? What kind of a precedent are you setting?

We all claim to revere the Constitution, but a censure is something that is a device, a way of avoiding the harsh constitutional option, and it is the only one we have up or down on impeachment. That, of course, is your judgment, and I am offering my views, for what they are worth.

Once in a while I do worry about the future. I wonder if, after this culture war is over, this one we are engaged in, an America will survive that is worth fighting for to defend.

People won't risk their lives for the U.N., or over the Dow Jones averages. But I wonder, in future generations, whether there will be enough vitality left in duty, honor and country to excite our children and grandchildren to defend America.

There is no denying the fact that what you decide will have a profound effect on our culture, as well as on our politics. A failure to convict will make a statement that lying under oath, while unpleasant and to be avoided, is not all that serious. Perhaps we can explain this to those currently in prison for perjury. We have re-

duced lying under oath to a breach of etiquette, but only if you are the President.

Wherever and whenever you avert your eyes from a wrong, from an injustice, you become a part of the problem.

On the subject of civil rights, it is my belief this issue doesn't belong to anyone; it belongs to everyone. It certainly belongs to those who have suffered invidious discrimination, and one would have to be catatonic not to know that the struggle to keep alive equal protection of the law never ends. The mortal enemy of equal justice is the double standard, and if we permit a double standard, even for the President, we do no favor to the cause of human rights. It has been said that America has nothing to fear from this President on the subject of civil rights. I doubt Paula Jones would subscribe to that endorsement.

If you agree that perjury and obstruction of justice have been committed, and yet you vote down the conviction, you are extending and expanding the boundaries of permissible Presidential conduct. You are saying a perjurer and obstructer of justice can be President, in the face of no less than three precedents for conviction of Federal judges for perjury. You shred those precedents and you raise the most serious questions of whether the President is in fact subject to the law or whether we are beginning a restoration of the divine right of kings. The issues we are concerned with have consequences far into the future because the real damage is not to the individuals involved, but to the American system of justice and especially the principle that no one is above the law.

Edward Gibbon wrote his magisterial "Decline and Fall of the Roman Empire" in the late 18th century—in fact the first volume was issued in 1776. In his work, he discusses an emperor named Septimius Severus, who died in 211 A.D. after ruling 18 years. And here is what Gibbon wrote about the emperor:

> Severus promised, only to betray; he flattered only to ruin; and however he might occasionally bind himself by oaths and treaties, his conscience, obsequious to his interest, always released him from the inconvenient obligation.

I guess those who believe history repeats itself are really onto something. Horace Mann said:

> You should be ashamed to die unless you have achieved some victory for humanity.

To the House managers, I say your devotion to duty and the Constitution has set an example that is a victory for humanity. Charles de Gaulle once said that France would not be true to herself unless she was engaged in some great enterprise. That is true of us all. Do we spend our short lives as consumers, space occupiers, clock watchers, as spectators, or in the service of some great enterprise?

I believe, being a Senator, being a Congressman, and struggling with all our might for equal justice for all, is a great enterprise. It is our great enterprise. And to my House managers, your great enterprise was not to speak truth to power, but to shout it. Now let us all take our place in history on the side of honor and, oh, yes: Let right be done.

I yield back my time.

The CHIEF JUSTICE. The Chair recognizes the majority leader.

ORDER OF PROCEDURE

Mr. LOTT. Mr. Chief Justice, I believe that concludes the closing arguments. Therefore, the Senate will reconvene as the Court of Impeachment at 1 p.m. on Tuesday to resume consideration of the articles of impeachment.

NOTICE OF INTENT TO SUSPEND THE RULES OF THE SENATE BY SENATOR DASCHLE

In accordance to Rule V of the Standing Rules of the Senate, I (for myself, Mr. LOTT, Mrs. HUTCHISON, Mr. HARKIN, Mr. WELLSTONE, Ms. COLLINS, Mr. SPECTER, and Mr. LEAHY) hereby give notice in writing that it is my intention to move to suspend the following portions of the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials in regard to any deliberations by Senators on the articles of impeachment during the trial of President William Jefferson Clinton:

(1) The phrase "without debate" in Rule VII;

(2) the following portion of Rule XX: ", unless the Senate shall direct the doors to be closed while deliberating upon its decisions. A motion to close the doors may be acted upon without objection, or, if objection is heard, the motion shall be voted on without debate by the yeas and nays, which shall be entered on the record"; and

(3) In Rule XXIV, the phrases "without debate", "except when the doors shall be closed for deliberation, and in that case" and ", to be had without debate".

ADJOURNMENT UNTIL 1 P.M. TOMORROW

Mr. LOTT. I ask unanimous consent that the Court of Impeachment stand in adjournment until 1 p.m. tomorrow, and I further ask consent that the Senate now resume legislative session. I remind all Senators to stand as the Chief Justice departs the Chamber.

There being no objection, at 6:34 p.m. the Senate, sitting as a Court of Impeachment, adjourned until Tuesday, February 9, 1999, at 1 p.m.

NOTICE OF INTENT TO SUSPEND THE RULES

Mr. DASCHLE. In accordance with rule V, on behalf of myself and Senator FEINSTEIN, I hereby give notice in writing that it is my intention to move to suspend the following:

Rule VII, paragraph 2 the phrase "upon the calendar"; and

Rule VIII, paragraph 2 the phrase "during the first two hours of a new legislative day."

This is in order to permit a motion to proceed to a censure resolution, to be introduced on the day of the motion to proceed, notwithstanding the fact that it is not on the calendar of business.

NOTICE OF INTENT TO SUSPEND THE RULES

Mrs. FEINSTEIN. In accordance with rule V, on behalf of myself and Senator DASCHLE, I hereby give notice in writing that it is my intention to move to suspend the following:

Rule VII, paragraph 2 the phrase "upon the calendar"; and

Rule VIII, paragraph 2 the phrase "during the first two hours of a new legislative day."

That is in order to permit a motion to proceed to a censure resolution, to be introduced on the day of the motion to proceed, notwithstanding the fact that it is not on the calendar of business.

Congress of the United States
House of Representatives
Washington, DC 20515

February 8, 1998

The Honorable Trent Lott
Majority Leader
United States Senate
Washington, DC 20510

The Honorable Tom Daschle
Minority Leader
United States Senate
Washington, DC 20510

Dear Distinguished Leaders:

The House has come upon evidence very recently which, if true, impeaches the credibility of certain representations made by witnesses who have testified under oath in the Impeachment Trial of William Jefferson Clinton, President of the United States.

Given the objection by the Minority Leader to the unanimous consent request of the Majority Leader to admit new evidence, and because this evidence goes to the heart of the truth-seeking purpose of this Impeachment Trial, we respectfully request that you exercise your powers under S. Res. 30 to make a motion to admit new evidence and to authorize and issue subpoenas for the appearance of witnesses at depositions.

This new evidence indicates that Sidney Blumenthal may have testified falsely before the Senate when he stated that he never told any reporters the false story that the President relayed to him that Monica Lewinsky was a "stalker." Credible evidence in the form of two signed sworn affidavits from reporters to whom Sidney Blumenthal told this story, along with a signed sworn affidavit verifying the statements of these affiants, confirm that the President may have engaged in an intimidation campaign against potential adverse witnesses in a civil rights action brought against him and in a criminal investigation of his misconduct. Mr. Blumenthal stated in his deposition that one of his duties as Assistant to the President is to relay information to the press. If the President, in telling false stories to Mr. Blumenthal, intended to discredit a witness both before the grand jury and in the public realm for political and legal purposes, the Articles charging obstruction of justice and making false and misleading statements before a grand jury about those acts of obstruction are given even more weight. The Senate therefore has an obligation to consider such evidence in its deliberations.

The Honorable Trent Lott
Majority Leader

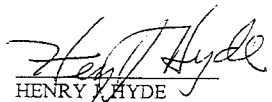
The Honorable Tom Daschle
Minority Leader

February 8, 1998
Page Two

If Mr. Blumenthal's testimony is false regarding the dissemination of derogatory information against potential witnesses who were named in the *Jones* suit and called by the Office of Independent Counsel in its authorized investigation of the President's misconduct, it would reveal that the White House as an institution may have been used by the President to obstruct justice for his legal and political benefit. It would also tend to establish a pattern and practice of intentionally monitoring the public perception of potential witnesses, such as Kathleen Willey and Monica Lewinsky, and devising schemes to undermine those witness' credibility in the public arena, and, in the case of Ms. Willey, the potential use of private investigators to intimidate.

We hope that you do not choose to ignore this important information. Thank you for your interest in discerning the truth in this Impeachment Trial.

Sincerely,



HENRY J. HYDE
On Behalf of the Managers on the part
of the House of Representatives

Enc. Draft Motion;
Affidavits of
Christopher Hitchens,
Carol Blue, and
R. Scott Armstrong

1958 VOL. II: FLOOR TRIAL PROCEEDINGS

IN THE SENATE OF THE UNITED STATES
Sitting as a Court of Impeachment

In Re	)
	)
Impeachment of	)
President William Jefferson Clinton	)

DRAFT
MOTION OF
THE MAJORITY AND MINORITY LEADERS OF THE UNITED STATES SENATE
TO ADMIT EVIDENCE
AND TO AUTHORIZE AND ISSUE SUBPOENAS
FOR THE APPEARANCE OF WITNESSES AT DEPOSITIONS

Now comes the Majority and Minority Leaders of the United States Senate, pursuant to S. Res. 30, with a motion to admit evidence and to authorize and issue subpoenas for the appearance of witnesses at depositions in connection with the Impeachment Trial of William Jefferson Clinton, President of the United States.

The Leaders move that the Senate admit into evidence and make a part of the record the signed sworn affidavits of the following individuals related to the Impeachment Trial, which are attached to this motion, and, in addition, authorize and issue subpoenas for the appearance of these witnesses at depositions for the purpose of providing testimony related to the Impeachment Trial:

1. Christopher Hitchens;
2. Carol Blue; and
3. R. Scott Armstrong.

The admission of such evidence and the deposing of such

witnesses is necessary to assess the credibility of testimony provided in this proceeding and to further the truth-seeking purpose of this Impeachment Trial.

DISTRICT OF COLUMBIA
AFFIDAVIT OF CHRISTOPHER HITCHENS

I, Christopher Hitchens, do hereby state on oath as follows:

1. I am 49 years of age and reside in the District of Columbia and am competent to execute this affidavit.

2. I am a resident alien, and am a citizen of the European Union and the United Kingdom.

3. I have been a journalist for 26 years.

4. I am self employed and contribute articles to Vanity Fair and The Nation.

CH. 5.ii.99

5. Sydney Blumenthal and I are social friends and journalistic acquaintances.

6. On March 19, 1998, Sidney Blumenthal, Carol Blue, and I met for lunch at the Occidental restaurant in Washington, D.C.

7. If called to testify, I would testify on personal knowledge to the following facts.

8. During lunch on March 19, 1998, in the presence of myself and Carol Blue, Mr. Blumenthal stated that, Monica Lewinsky had been a "stalker" and that the President was "the victim" of a predatory and unstable sexually demanding young woman. Referring to Ms. Lewinsky, Mr. Blumenthal used the word "stalker" several times. Mr. Blumenthal advised us that this version of the facts was not generally understood.

9. Also during that lunch, Mr. Blumenthal stated that Kathleen Willey's poll numbers were high but would fall and would not look so good in a few days.

10. I have knowledge that Mr. Blumenthal recounted to other people in the journalistic community the same story about Monica Lewinsky that he told to me and Carol Blue.

FURTHER AFFIANT SAYETH NOT.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this fifth day of February, 1999.

Christopher Hitchens

5.ii.99

County of San Mateo
State of California

AFFIDAVIT OF CAROL BLUE

I, Carol Blue, do hereby state on oath as follows:

1. I am over 18 years of age, reside in the District of Columbia and am competent to execute this affidavit.

2. I am a citizen of the United States.

3. I am currently self-employed as a writer.

4. Sidney Blumenthal and I are social friends.

5. On or about March 19, 1998, Sidney Blumenthal, Christopher Hitchens, and I met for lunch at the Occidental restaurant in Washington, D.C.

6. If called to testify, I would testify on personal knowledge to the following facts in addition to those set forth in the affidavit of Christopher Hitchens executed on February 5, 1999.

7. During that lunch, in the presence of myself and Christopher Hitchens, Mr. Blumenthal stated that the President told him that he (the President) was the "victim" of Monica Lewinsky's sexual advances and that she was a "stalker, " and was "crazy." Mr. Blumenthal used the word "stalker" several times to describe Ms. Lewinsky. Mr. Blumenthal conveyed his conviction that the President's version of the events were true.

8. Also during that lunch, Mr. Blumenthal stated that Monica Lewinsky's poll numbers were very low and that Kathleen Willey's poll numbers were very high, but that would change by Friday, and Ms. Willey's "numbers" would fall.

FURTHER AFFIANT SAYETH NOT.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this seventh day of February, 1999.

Carol Blue

DISTRICT OF COLUMBIA

Affidavit of R. Scott Armstrong

I, R. Scott Armstrong, do hereby state on oath as follows:

1. I am 53 years of age and reside in the District of Columbia and am competent to execute this affidavit.

2. I am a citizen of the United States.

3. I am currently an author and journalist. I have been so engaged for approximately the past 24 years and was formerly affiliated with various news organizations including The Washington Post. I also served as Senior Investigator to the Senate Select Committee on Presidential Campaign Activities involving the so called Senate Watergate Committee.

4. I am socially and professionally acquainted with Sidney Blumenthal, Christopher Hitchens and Carol Blue.

5. On or about March 18, 1998, I was on a panel discussion at the National Press Club with Christopher Hitchens among others concerning national security reporting.

6. Following that panel discussion, I met with Christopher Hitchens and Carol Blue at which time they recounted to me a conversations they had had with Sidney Blumenthal in which Mr. Blumenthal had related to them among other things that Monica Lewinsky was a "stalker".

FURTHER AFFIANT SAYETH NOT.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this eighth day of February 1999.

R. Scott Armstrong

TUESDAY, FEBRUARY 9, 1999

[From the Congressional Record]

The Senate met at 1:05 p.m. and was called to order by the Chief Justice of the United States.

TRIAL OF WILLIAM JEFFERSON CLINTON, PRESIDENT OF THE UNITED STATES

The CHIEF JUSTICE. The Senate will convene as a Court of Impeachment. The Chaplain will offer a prayer.

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Almighty God, we renew our trust in You when we realize how much You have entrusted to us. We are stunned by the psalmist's reminder that You have crowned us with glory and honor and given us responsibility over the work of Your hands. We renew our dependence on You as we assume this breathtaking call to courageous leadership.

Help the Senators to claim Your promised glory and honor. Imbue them with Your own attributes and strengthen their desire to do what is right and just. As they humbly cast before You any crowns of position or pride, crown them with Your presence and power. In Your holy Name. Amen.

The CHIEF JUSTICE. The Sergeant at Arms will make proclamation.

The Sergeant at Arms, James W. Ziglar, made proclamation as follows:

Hear ye! Hear ye! Hear ye! All persons are commanded to keep silent, on pain of imprisonment, while the Senate of the United States is sitting for the trial of the articles of impeachment exhibited by the House of Representatives against William Jefferson Clinton, President of the United States.

THE JOURNAL

The CHIEF JUSTICE. If there is no objection, the Journal of proceedings of the trial is approved to date.

The Chair recognizes the majority leader.

Mr. LOTT. Thank you, Mr. Chief Justice.

ORDER OF PROCEDURE

Mr. LOTT. This afternoon, the Senate will begin final deliberations on the articles of impeachment. However, pursuant to S. Res. 30, a Senator may at this time offer a motion to suspend the rules to allow the final deliberations to remain open. That motion is not amendable and no motions to that motion may be offered. Therefore, I expect at least one vote to occur shortly. Following that vote, if the motion is defeated, I will move to close deliberations. If that motion should be adopted, the Senate will begin full deliberations, with each Senator allocated 15 minutes to speak. And I note that that will be true whether it is in open or closed session, although

Senator DASCHLE and I may have some further comments to make about that later on.

I note that if each Senator uses his or her entire debate time, the proceedings will take 25 hours, not including breaks and recesses. Therefore, I remind all Senators that Lincoln gave his Gettysburg Address in less than 3 minutes and Kennedy's inaugural address was slightly over 7 minutes. But certainly every Senator will have his or her opportunity to speak for up to 15 minutes, if that is their desire, and, of course, we would also need to communicate with the Chief Justice about the time of the proceedings.

I expect that we will try to go until about 6 or 6:30 this afternoon. I want to confer with Senator DASCHLE, but I think maybe we will try to begin earlier tomorrow and go throughout the day into the early evening. Again, we do have to take into consideration the fact that about 7 or 8 hours will be the absolute maximum we will probably be able to do in a single day. We will talk further about that and make an announcement before we conclude today.

I now yield the floor to the Senator from Pennsylvania, Senator SPECTER, for the purpose of propounding a unanimous consent request.

The CHIEF JUSTICE. The Chair recognizes Senator SPECTER.

UNANIMOUS CONSENT REQUEST

Mr. SPECTER. Mr. Chief Justice, on behalf of the leader, and in my capacity as a copresider for the Senate at the deposition of Mr. Sidney Blumenthal, I ask unanimous consent that the parties be allowed to take additional discovery, including testimony on oral deposition of Mr. Christopher Hitchens, Ms. Carol Blue, Mr. R. Scott Armstrong and Mr. Sidney Blumenthal with regard to possible fraud on the Senate by alleged perjury in the deposition testimony of Mr. Sidney Blumenthal with respect to allegations that he, Mr. Sidney Blumenthal, was involved with the dissemination beyond the White House of information detrimental to the credibility of Ms. Monica Lewinsky, and that pursuant to the authority of title II of Senate Resolution 30, the Chief Justice of the United States, through the Secretary of the Senate, shall issue subpoenas for the taking of such testimony at a time and place to be determined by the majority leader after consultation with the Democratic leader, and, further, that these depositions be conducted pursuant to the procedures set forth in title II of Senate Resolution 30, except that the last four sentences of section 204 shall not apply to these depositions, provided, further, however, that the final sentence of section 204 shall apply to the deposition of Mr. Sidney Blumenthal.

The CHIEF JUSTICE. Is there objection?

Mr. DASCHLE. Mr. Chief Justice, I object.

The CHIEF JUSTICE. Objection is heard.

Mr. LOTT addressed the Chair.

The CHIEF JUSTICE. The Chair recognizes the majority leader.

MOTION TO SUSPEND THE RULES

Mr. LOTT. On behalf of myself and Senator DASCHLE, I move to suspend the rules on behalf of Senators HUTCHISON, HARKIN, and others in order to conduct open deliberations.

Mr. WELLSTONE addressed the Chair.

The CHIEF JUSTICE. The Senator from Minnesota.

Mr. WELLSTONE. I ask unanimous consent that there be a 40-minute debate, equally divided, between the leaders or their designees in open session on the motion to suspend the rules.

The CHIEF JUSTICE. Is there objection?

Mr. GREGG. I object.

The CHIEF JUSTICE. Objection is heard.

The question is on the motion to suspend the rules. The yeas and nays are automatic. The clerk will call the roll.

The legislative clerk called the roll.

The yeas and nays resulted—yeas 59, nays 41, as follows:

[Rollcall Vote No. 15]

[Subject: Lott motion to suspend the rules]

YEAS—59

Abraham	Feinstein	Lincoln
Akaka	Gorton	Lugar
Baucus	Graham	McCain
Bayh	Hagel	Mikulski
Biden	Harkin	Moynihan
Bingaman	Hollings	Murray
Boxer	Hutchison	Reed
Breaux	Inouye	Reid
Bryan	Jeffords	Robb
Byrd	Johnson	Rockefeller
Cleland	Kennedy	Sarbanes
Collins	Kerrey	Schumer
Conrad	Kerry	Smith (OR)
Daschle	Kohl	Snowe
DeWine	Kyl	Specter
Dodd	Landrieu	Stevens
Dorgan	Lautenberg	Torricelli
Durbin	Leahy	Wellstone
Edwards	Levin	Wyden
Feingold	Lieberman	

NAYS—41

Allard	Enzi	Murkowski
Ashcroft	Fitzgerald	Nickles
Bennett	Frist	Roberts
Bond	Gramm	Roth
Brownback	Grams	Santorum
Bunning	Grassley	Sessions
Burns	Gregg	Shelby
Campbell	Hatch	Smith (NH)
Chafee	Helms	Thomas
Cochran	Hutchinson	Thompson
Coverdell	Inhofe	Thurmond
Craig	Lott	Voinovich
Crapo	Mack	Warner
Domenici	McConnell	

The CHIEF JUSTICE. On this vote the yeas are 59, the nays are 41. Two-thirds of those Senators voting—a quorum being present—not having voted in the affirmative, the motion is not agreed to.

Mr. LOTT. Mr. Chief Justice, I suggest the absence of a quorum.

The CHIEF JUSTICE. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. LOTT. Mr. Chief Justice, I ask unanimous consent that the order for the quorum call be rescinded.

The CHIEF JUSTICE. In the absence of objection, so ordered.

Mr. LOTT. Mr. Chief Justice, I want to make this reminder: Only those people who are properly authorized to be on the floor of the Senate should be here. The Sergeant at Arms will act accordingly.

Now, Mr. Chief Justice, there is a desire by a number of Senators that it be possible for their statements, even in closed session, to be made a part of the RECORD. Senator DASCHLE and I have talked a great deal about this. We think this is an appropriate way to proceed.

MOTION RELATING TO RECORD OF PROCEEDINGS HELD IN CLOSED SESSION

Mr. LOTT. Therefore, I send this motion to the desk: That the record of the proceedings held in closed session for any Senator to insert their final deliberations on the articles of impeachment shall be published in the CONGRESSIONAL RECORD at the conclusion of the trial.

The CHIEF JUSTICE. The clerk will read the motion.

The legislative clerk read as follows:

The Senator from Mississippi [Mr. LOTT] for himself and Mr. DASCHLE, moves as follows:

That the record of the proceedings held in closed session for any Senator to insert their final deliberations on the Articles of Impeachment shall be published in the Congressional Record at the conclusion of the trial.

Mr. LOTT. Mr. Chief Justice, so everybody can understand this, may I be recognized?

The CHIEF JUSTICE. The majority leader is recognized.

Mr. LOTT. It is the desire of one and all to have the opportunity for this record to be made. After the trial is concluded, Senators can have their statements in the closed session put into the CONGRESSIONAL RECORD—in the record of the trial. There may be Senators that choose, for whatever reason, not to do it in that way at that time. Senator DASCHLE and I have talked a great deal about this. We think this is the fair way to make that record. We urge that it be adopted.

Mrs. FEINSTEIN. Mr. Chief Justice, point of clarification.

The CHIEF JUSTICE. The Senator from California, Mrs. FEINSTEIN, is recognized.

Mrs. FEINSTEIN. Mr. Leader, can I ask a point of clarification? Does this mean that repartee between Members will not be recorded, but just the statement as the Member submits it?

Mr. LOTT. Mr. Chief Justice, if I could respond to that, I think that would be up to the Senators. That has been one of my points. I hope we won't just have speeches and that, in fact, we will have deliberations. As we have found ourselves in previous closed sessions, almost uncontrollably we wound up discussing and talking with each other. I hope that if we come to that, the Senators involved in the exchange would make that a part of the record and part of history. I believe they would have that right under this proposal.

Mr. DASCHLE. If the leader will yield for the purpose of clarification, I may have misunderstood what the majority leader de-

scribed here. But our intent would be to allow statements to be inserted into the CONGRESSIONAL RECORD, not into the hearing record.

Mr. LOTT. That is correct. I misstated that.

Mr. DASCHLE. So that people understand, this would actually allow you the opportunity to insert your statement into the CONGRESSIONAL RECORD, succeeding the votes on the two articles.

Mr. WELLSTONE addressed the Chair.

The CHIEF JUSTICE. The Senator from Minnesota, Mr. WELLSTONE, is recognized.

Mr. WELLSTONE. Mr. Chief Justice, I have a question for the majority leader. I might not have heard this the right way. This would allow any Senator, who so wishes, to have his or her statements made in all of our—not just the final deliberations, but this would cover all of our sessions that have been in closed session; is that correct or not?

Mr. LOTT. Mr. Chief Justice, I believe this would be applicable only to the final deliberations.

Mr. WELLSTONE. Mr. Chief Justice, if I could ask the majority leader whether he might be willing—it seems to me that if this is the principle, I wonder if he would amend his request to any Senator who wants to—and it is up to the Senator—this is far different than having our final deliberations a matter of public record, which is what I think we should do, but what you are saying is any Senator who so wishes can do so. Might that not apply to all of the closed sessions we had? It seems to me that the same principle applies.

Mr. LOTT. That is not what is in this proposal. I would like to think about that and discuss it with the Senator from Minnesota and others. I remember making a passionate speech, but I had no prepared notes; and so I could not put it into the RECORD if I wanted to when we were in one of those closed sessions.

I honestly had not considered that. This was aimed at the closing deliberations. I think we need to give some thought to reaching back now to the other closed sessions before we move in that direction.

Mr. CRAIG addressed the Chair.

The CHIEF JUSTICE. The Senator from Idaho, Mr. CRAIG, is recognized.

Mr. CRAIG. Mr. Chief Justice, will the majority leader yield for a question?

Mr. LOTT. I would be glad to yield, Mr. Chief Justice.

Mr. CRAIG. Is my understanding correct that your motion would keep this session of deliberations closed, except for those Senators who would choose to have their statements become a part of the CONGRESSIONAL RECORD, and that it would be the choice of the individual Senators, and that the deliberations of the closed session would remain closed unless otherwise specified by each individual Senator, specific to their statements; is that a fair understanding?

Mr. LOTT. Mr. Chief Justice, that is an accurate understanding, and that is with the presumption that we will go into closed session. And such a motion will be made in short order.

I want to also clarify that this is made on behalf of Senator DASCHLE and myself. We have consulted a great deal on this and

we have both been thinking about doing something like this, but we never put it on paper until a moment ago.

Mr. CRAIG. I thank the leader.

Mr. COVERDELL addressed the Chair.

The CHIEF JUSTICE. The Senator from Georgia, Mr. COVERDELL, is recognized.

Mr. COVERDELL. I want to make an inquiry to the leader in response to the question by the Senator from California, who alluded to actual deliberations and statements among Senators. I assume that in order to go into the CONGRESSIONAL RECORD, it would require all of the participants of the colloquy——

The CHIEF JUSTICE. The Parliamentarian tells me that this is all out of order.

Mr. LOTT. Mr. Chief Justice, if I may, in a moment I will make a motion to close the doors for deliberations. However, we have to dispose of this.

The CHIEF JUSTICE. The question is on the motion——

Mr. LEAHY. Mr. Chief Justice, I ask unanimous consent to ask the majority leader one follow-up question on his motion.

The CHIEF JUSTICE. Without objection.

Mr. LEAHY. Mr. Chief Justice, I want to make sure I fully understand the distinguished majority leader. Our vote on what we do on the record does not include a vote on closing the session itself, it simply assumes that vote carries?

Mr. LOTT. That is correct. That is my understanding.

Mr. HARKIN addressed the Chair.

The CHIEF JUSTICE. The Chair recognizes the Senator from Iowa, Mr. HARKIN.

Mr. HARKIN. Mr. Chief Justice, again, I ask unanimous consent that I be able to ask the majority leader a question regarding the ethics.

The CHIEF JUSTICE. Without objection.

Mr. HARKIN. I have a question regarding the ethics rules. Under this proposed motion, could a Senator give his or her statement in public and then give the same statement in closed session and still not violate the ethics rules? I am concerned about how we might want to follow that.

I yield to the head of the Ethics Committee for clarification.

Mr. SMITH of New Hampshire. If the motion carries, as has been outlined by the majority leader, you have every right to release your statement. That would not violate rule 29.5.

Mr. HARKIN. I could do whatever——

Mr. SMITH of New Hampshire. Your statement, yours, not anybody else's.

Mrs. MURRAY addressed the Chair.

The CHIEF JUSTICE. The Senator from Washington, Mrs. MURRAY, is recognized.

Mrs. MURRAY. Mr. Chief Justice, I ask unanimous consent to ask the majority leader a point of clarification.

The CHIEF JUSTICE. Without objection.

Mrs. MURRAY. If we reference another Senator's remarks in our statements, would we have to get that other Senator's consent in order to submit our statement, then, for the RECORD?

Mr. LOTT. I am not chairman of the Ethics Committee, but I am assured by those on the committee that you would have to do so. Are we ready to move forward?

Mr. KERRY addressed the Chair.

The CHIEF JUSTICE. The Senator from Massachusetts, Mr. KERRY, is recognized,

Mr. KERRY. Mr. Chief Justice, I ask unanimous consent that I be permitted to ask a point of clarification.

The CHIEF JUSTICE. Without objection.

Mr. KERRY. I ask the majority leader this: He mentioned that he hoped during the deliberations that there would be more than just speeches, that there would be a process of colloquy. I was wondering if he was contemplating how that would work because I think under the rules we are limited to one intervention of a specific time period. Does the majority leader contemplate approaching that difficulty?

Mr. LOTT. Mr. Chief Justice, I have discussed this with the Democratic leader, and there is no ironclad rule. You know, in our other closed session when we sort of got on a roll, we yielded additional time to each other, and then at some point we started to have a round robin. The Chief Justice probably thought it was all completely out of order, but he allowed us to go forward. I think we will have to deal with that when we get there. I think, as has been the case all the way along, we will be understanding of each other and try to make these deliberations genuine deliberations. I think it would benefit us all in the final result.

Before I make a motion to close the doors, I yield to the Senator from Texas, Mrs. HUTCHISON, for a parliamentary inquiry.

The CHIEF JUSTICE. We have a motion, do we not?

Mr. LOTT. I beg your pardon.

The CHIEF JUSTICE. However amorphous it may be.

[Laughter.]

The question is on agreeing to the motion.

The motion was agreed to.

Mr. LOTT. Thank you, Mr. Chief Justice, for that amorphous ruling.

[Laughter.]

I yield to the Senator from Texas for a parliamentary inquiry.

The CHIEF JUSTICE. The Chair recognizes the Senator from Texas, Mrs. HUTCHISON.

Mrs. HUTCHISON. Mr. Chief Justice, rule XX says that while the Senate is in session the doors shall remain open unless the Senate directs that the doors be closed.

My inquiry is this: If the Senate, by a majority, voted not to direct the doors to be closed, would it be in order to proceed to deliberations with the doors open?

The CHIEF JUSTICE. The Chair is of the view that it would not be in order for this reason: On the initial reading of rules XX and XXIV of the Senate impeachment rules, it would not appear to mandate that the deliberations and debate occur in closed session, but only to permit it. But it is clear from a review of the history of the rules that the committee that was established in 1868 to create the rules specifically intended to require closed sessions for debate and deliberation. Senator Howard reported the rules for the

committee and clearly stated this intention, and Chief Justice Chase, in the Andrew Johnson trial, stated in response to an inquiry, "There can be no deliberation unless the doors are closed. There can be no debate under the rules unless the doors be closed."

I understand from the Parliamentarian that it has been the consistent practice of the Senate for the last 130 years in impeachment trials to require deliberations and debate by the Senate to be held in closed session. Therefore—though there may be some ambiguity between the two rules—my ruling is based partly on deference to the Senate's longstanding practice.

In the opinion of the Chair, there can be no deliberation on any question before the Senate in open session unless the Senate suspends its rules, or consent is granted.

Mrs. HUTCHISON. Thank you.

MOTION TO CLOSE THE DOORS FOR FINAL DELIBERATION

Mr. LOTT. Mr. Chief Justice, with that record now having been made, I now move that the doors for final deliberations be closed, and I ask unanimous consent that the yeas and nays be vitiated.

The CHIEF JUSTICE. Is there objection?

Mr. WELLSTONE addressed the Chair.

The CHIEF JUSTICE. The Senator from Minnesota is recognized.

Mr. WELLSTONE. Mr. Chief Justice, the majority leader is trying to get the floor, but I wonder whether I could not move that any Senator be allowed, if he or she makes it their choice, to have our statements that have been made and passed in closed session left entirely up to us to also be a part of the CONGRESSIONAL RECORD.

Mr. LOTT. Mr. Chief Justice, if I could respond, give us an opportunity to discuss this with you. We will have another opportunity to do that. I think maybe we can work something out. I would like to make sure we have thought it through, if that is appropriate, Mr. Chief Justice.

The CHIEF JUSTICE. Is there objection?

Mr. HARKIN. Mr. Chief Justice, I object.

The CHIEF JUSTICE. Objection is heard.

The yeas and nays are automatic. The clerk will call the roll.

The bill clerk called the roll.

The result was announced—yeas 53, nays 47, as follows:

[Rollcall Vote No. 16]

[Subject: Motion to close the doors]

YEAS—53

Abraham	Chafee	Fitzgerald
Allard	Cochran	Frist
Ashcroft	Collins	Gorton
Bennett	Coverdell	Gramm
Bond	Craig	Grams
Brownback	Crapo	Grassley
Bunning	DeWine	Gregg
Burns	Domenici	Hagel
Campbell	Enzi	Hatch

Helms
Hutchinson
Inhofe
Jeffords
Kyl
Lott
Lugar
Mack
McCain
McConnell
Murkowski
Nickles
Roberts
Roth
Santorum
Sessions
Shelby
Smith (NH)
Smith (OR)
Snowe
Stevens
Thomas
Thompson
Thurmond
Voinovich
Warner

NAYS—47

Akaka
Baucus
Bayh
Biden
Bingaman
Boxer
Breaux
Bryan
Byrd
Cleland
Conrad
Daschle
Dodd
Dorgan
Durbin
Edwards
Feingold
Feinstein
Graham
Harkin
Hollings
Hutchison
Inouye
Johnson
Kennedy
Kerrey
Kerry
Kohl
Landrieu
Lautenberg
Leahy
Levin
Lieberman
Lincoln
Mikulski
Moynihan
Murray
Reed
Reid
Robb
Rockefeller
Sarbanes
Schumer
Specter
Torricelli
Wellstone
Wyden

The motion was agreed to.

CLOSED SESSION

[At 1:52 p.m., the doors of the Chamber were closed. The proceedings of the Senate were held in closed session until 6:27 p.m.; whereupon, the Senate resumed open session.]

OPEN SESSION

Mr. LOTT. Mr. Chief Justice, I ask unanimous consent that the Senate resume open session.

The CHIEF JUSTICE. Without objection, it is so ordered.

ADJOURNMENT UNTIL 10 A.M. TOMORROW

Mr. LOTT. Mr. Chief Justice, I ask unanimous consent that the Senate stand adjourned until 10 a.m. tomorrow. I further ask unanimous consent that immediately following the prayer on Wednesday, the Senate resume closed session for further deliberations of the pending articles of impeachment.

The CHIEF JUSTICE. Is there objection? There being no objection, it is so ordered.

Mr. LOTT. All Senators please remain standing at your desk.

Thereupon, at 6:27 p.m., the Senate, sitting as a Court of Impeachment, adjourned until Wednesday, February 10, 1999, at 10 a.m.

MOTIONS TO OPEN TO THE PUBLIC THE FINAL DELIBERATIONS ON THE ARTICLES OF IMPEACHMENT

Mr. LEAHY. Mr. Chief Justice, in relation to the earlier vote, I have these thoughts. Accustomed as we and the American people are to having our proceedings in the Senate open to the public and subject to press coverage, the most striking prescription in the "Rules of Procedure and Practice in the Senate when Sitting on Impeachment Trials" has been the closed deliberations required on any question, motion and now on the final vote on the articles of impeachment.

The requirement of closed deliberation more than any other rule reflects the age in which the rules were originally adopted in 1868. Even in 1868, however, not everyone favored secrecy. During the trial of President Johnson, the senior Senator from Vermont, George F. Edmunds, moved to have the closed deliberations on the articles transcribed and officially reported "in order that the world might know, without diminution or exaggeration, the reasons and views upon which we proceed to our judgment." (Cong. Globe Supp'l, Impeachment Trial of President Andrew Johnson, 40th Cong., 2d Sess., vol. 4, p. 424.) The motion was tabled.

In the 130 years that have passed since that time, the Senate has seen the advent of television in the Senate Chamber, instant communication and rapid news cycles, distribution of Senate documents over the Internet, the addition of 46 Senators representing 23 additional States, and the direct election of Senators by the people in our States.

Opening deliberations would help further the dual purposes of our rules to promote fairness and political accountability in the impeachment process. I supported the motion by Senators HARKIN, WELLSTONE, and others to suspend this rule requiring closed deliberations and to open our deliberations on Senator BYRD's motion to dismiss and at other points earlier in this trial. We were unsuccessful. Now that we are approaching our final deliberations on the articles of impeachment, themselves, I hope that this secrecy rule will be suspended so that the Senate's deliberations are open and the American people can see them. In a matter of this historic importance, the American people should be able to witness their Senators' deliberations.

Some have indicated objection to opening our final deliberations because petit juries in courts of law conduct their deliberations in secret. Analogies to juries in courts of law are misplaced. I was privileged to serve as a prosecutor for 8 years before I was elected to the Senate. As a prosecutor, I represented the people of Vermont in court and before juries on numerous occasions. I fully appreciate the traditions and importance of allowing jurors to deliberate and make their decisions privately, without intrusion or pressure from the parties, the judge or the public. The sanctity of the jury deliberation room ensures the integrity and fairness of our judicial system.

The Senate sitting as an impeachment court is unlike any jury in any civil or criminal case. A jury in a court of law is chosen specifically because the jurors have no connection or relation to the parties or their lawyers and no familiarity with the allegations.

Keeping the deliberations of regular juries secret ensures that as they reach their final decision, they are free from outside influences or pressure.

As the Chief Justice made clear on the third day of the impeachment trial, the Senate is more than a jury; it is a court. Courts are called upon to explain the reasons for decisions.

Furthermore, to the extent the Senate is called upon to evaluate the evidence as a jury, we stand in different shoes than any juror in a court of law. We all know many of the people who have been witnesses in this matter; we all know the Republican managers—indeed, one Senator is a brother of one of the managers; and we were familiar with the underlying allegations in this case before the Republican managers ever began their presentation.

Because we are a different sort of jury, we shoulder a heavier burden in explaining the reasons for the decisions we make here. I appreciate why Senators would want to have certain of our deliberations in closed session: to avoid embarrassment to and protect the privacy of persons who may be discussed. Yet, on the critical decisions we are now being called upon to make our votes on the articles themselves, allowing our deliberations to be open to the public helps assure the American people that the decisions we make are for the right reasons.

In 1974, when the Senate was preparing itself for the anticipated impeachment trial of former President Richard Nixon, the Committee on Rules and Administration discussed the issue of allowing television coverage of the Senate trial. Such coverage did not become routine in the Senate until later in 1986. In urging such coverage of the possible impeachment trial of President Nixon, Senator Metcalf (D-MT), explained:

> Given the fact that the party not in control of the White House is the majority party in the Senate, the need for broadcast media access is even more compelling. Charges of a 'kangaroo court,' or a 'lynch mob proceeding' must not be given an opportunity to gain any credence whatsoever. Americans must be able to see for themselves what is occurring. An impeachment trial must not be perceived by the public as a mysterious process, filtered through the perceptions of third parties. The procedure whereby the individual elected to the most powerful office in the world can be lawfully removed must command the highest possible level of acceptance from the electorate." (Hrg. August 5 and 6, 1974, p. 37).

Opening deliberation will ensure complete and accurate public understanding of the proceedings and the reasons for the decisions we make here. Opening our deliberations on our votes on the articles would tell the American people why each of us voted the way we did.

The last time this issue was actually taken up and voted on by the Senate was more than a century ago in 1876, during the impeachment trial of Secretary of War William Belknap. Without debate or deliberation, the Senate refused then to open the deliberations of the Senate to the public. That was before Senators were elected directly by the people of their State, that was before the Freedom of Information Act confirmed the right of the people to see how government decisions are made. Keeping closed our deliberations is wholly inconsistent with the progress we have made over the last century to make our Government more accountable to the people.

Constitutional scholar Michael Gerhardt noted in his important book, "The Federal Impeachment Process," that "the Senate is ideally suited for balancing the tasks of making policy and finding facts (as required in impeachment trials) with political accountability." Public access to the reasons each Senator gives for his vote on the articles is vital for the political accountability that is the hallmark of our role.

I likewise urge the Senate to adjust these 130-year-old rules to allow the Senate's votes on the articles of impeachment to be recorded for history by news photographers. This is a momentous official and public event in the annals of the Senate and in the history of the Nation. This is a moment of history that should be documented for both its contemporary and its lasting significance.

Open deliberation ensures complete accountability to the American people. Charles Black wrote that Presidential impeachment "unseats the person the people have deliberately chosen for the office." ("Impeachment: A Handbook," p. 17.) The American people must be able to judge if their elected representatives have chosen for or against conviction for reasons they understand, even if they disagree. To bar the American people from observing the deliberations that result in these important decisions is unfair and undemocratic.

The Senate should have suspended the rules so that our deliberations on the final question of whether to convict the President of these articles of impeachment were held in open session.

I ask unanimous consent that a copy of the Application of Cable News Network, submitted by Floyd Abrams and others, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

IN THE U.S. SENATE SITTING AS A COURT OF IMPEACHMENT

In re

IMPEACHMENT OF WILLIAM JEFFERSON CLINTON, PRESIDENT OF THE UNITED STATES

APPLICATION OF CABLE NEWS NETWORK FOR A DETERMINATION THAT THE CLOSURE OF THESE PROCEEDINGS VIOLATES THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION

To: The Honorable William H. Rehnquist and The Honorable Members of the U.S. Senate

Cable News Network ("CNN") respectfully submits this application for a determination that the First Amendment to the United States Constitution requires that the public be permitted to attend and view the debates, deliberations and proceedings of the United States Senate as to the issue of whether President William Jefferson Clinton shall be convicted and as to other related matters.

INTRODUCTION

Under Rules VII, XX and XXIV of the "Rules of Procedure and Practice in the Senate When Sitting On Impeachment Trials," the Senate has determined to sit in

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Footnotes at end of document.

closed session during its consideration of various issues that have arisen during these impeachment proceedings. Motions to suspend the rules have failed and the debates among members of the Senate as to a number of significant matters have been closed. As the final debates and deliberations approach at which each member of the Senate will voice his or her views on the issue of whether President Clinton should be convicted or acquitted of the charges made, the need for the closest, most intense public scrutiny of the proceedings in this body increases. By this application, CNN seeks access for the public to observe those debates, as well as other proceedings that bear upon the resolution of the impeachment trial. The basis of this application is the First Amendment to the Constitution of the United States.

We make this application mindful that deliberations upon impeachment were conducted behind "closed doors" at the last impeachment trial of a President, in 1868. We are, as well, mindful of the power of the Senate—consistent with the power conferred upon it in Article I, Section 3 of the Constitution—to exercise full control over the conduct of impeachment proceedings held before it. In so doing, however, the Senate must itself be mindful of its unavoidable responsibility to adopt rules and procedures consistent with the entirety of the Constitution as it is now understood and as the Supreme Court has interpreted it.

The commands of the First Amendment, we urge, are at war with closed-door impeachment deliberations. If there is one principle at the core of the First Amendment it is that, as Madison wrote, "the censorial power is in the people over the Government, and not in the Government over the people." 4 Annals of Congress, p. 934 (1794). That proposition in turn is rooted in the expectation that citizens—the people—will have the information that enables them to judge government and those in government. The right and ability of citizens to obtain the information necessary for self-government is indeed at the heart of the Republic itself: "a people who mean to be their own Governors," Madison also wrote, "must arm themselves with the power which knowledge gives." James Madison, Letter to W.T. Barry, in 9 Writings of James Madison 103 (G. Hunt ed., 1910). As Chief Justice Warren Burger observed, writing for the Supreme Court in 1980 in one of its many recent rulings vindicating the principle of open government: "People in an open society do not demand infallibility from their institutions, but it is difficult for them to accept what they are prohibited from observing." *Richmond Newspapers, Inc.* v. *Virginia,* 448 U.S. 555, 572 (1980). Those very words could well have been written about the proceedings before the Senate today.

All agree that the impeachment of a President presents the most solemn question of self-government that a free society can ever confront. All should also agree that the public ought to have the most complete information about each decision made by the body responsible for ruling upon that impeachment. Should the Senate vote to convict, a President duly elected twice by the public will be removed from office. Does not a self-governing public have the most powerful interest in being informed about every aspect of that decision and why it was taken? Should the Senate vote to acquit, the President will not be removed in the face of impeachment proceedings in which the majority in the House branded him a criminal. Can it seriously be doubted that the public possesses just as profound a right to know why?

Only recently—and only during this century (and well after the trial of Andrew Johnson)—has our commitment to the principle that debate on public issues should be open become not merely a nationally shared philosophy but an element embedded in constitutional law as well. But deeply-rooted in the law it has become. It is thus no answer to observe that impeachment deliberations in the Senate were closed in the nineteenth century. The Senate has a duty to consider the transformation of First Amendment principles since that time in determining whether it is now constitutionally permissible to close impeachment deliberations on the eve of the twenty-first century. If, as is also true, the Senate, rather than the Supreme Court, was chosen to try impeachments precisely because its members are "the representatives of the nation," Federalist No. 65, and as such possess a greater "degree of credit and authority" than the Supreme Court to carry out the task of determining the fate of a President,[1] that "credit and authority" can only be brought to bear if the process by which judgment is reached is open to the public.

THE OBLIGATION OF CONGRESS TO ACCOUNT FOR AND ABIDE BY THE FIRST AMENDMENT

As we have said, we are mindful of the language of Article I, Section 3, according the Senate the "sole Power to try all Impeachments." *See Nixon* v. *United States,* 506 U.S. 224 (1993) (according the Senate broad discretion to choose impeachment procedures). But this very delegation of authority to the Senate, a delegation that makes most issues concerning impeachment rules "non-justiciable", *see Nixon, supra,* also imposes on this body a very special responsibility to ensure that those

rules comply with constitutional mandates.[2] Congress itself—the very entity against which the First Amendment affords the most explicit protection[3]—is bound to abide by the First Amendment. The Constitution is "the supreme Law of the Land," U.S. Const., art. VI, para. 2, and all "Senators and Representatives . . . shall be bound by Oath or Affirmation, to support" it. *Id.* para. 3. The Supreme Court has repeatedly recognized that Congress is itself obligated to interpret the Constitution in exercising its authority. *See, e.g., Rostker* v. *Goldberg,* 453 U.S. 57, 64 (1981) ("Congress is a coequal branch of government whose Members take the same oath we do to uphold the Constitution of the United States."). And in promulgating its rules the Congress must, of course, abide by the Constitution: "The constitution empowers each house to determine its rules and proceedings. It may not by its rules ignore constitutional restraints or violate fundamental rights. . . ." *United States* v. *Ballin*, 144 U.S. 1, 5 (1892), quoted in *Consumers Union of United States, Inc.* v. *Periodical Correspondents' Assoc.*, 515 F.2d 1341, 1347 (D.C. Cir. 1975), *cert. denied*, 423 U.S. 1051 (1976); *see Watkins* v. *United States*, 354 U.S. 178, 188 (1957).

THE COMMAND OF THE FIRST AMENDMENT

The architecture of free speech law—and, in particular, that law placed in the context of access to information as to how and why government power is being exercised—could not more strongly favor the broadest dissemination of information about, and comment on, government. The foundation of the First Amendment is, in fact, our republican form of government itself. As the Supreme Court recognized in the landmark free speech decision, *New York Times Co.* v. *Sullivan*, 376 U.S. 254 (1964): ". . . the Constitution created a form of government under which '[t]he people, not the government possess the absolute sovereignty.' The structure of the government dispersed power in reflection of the people's distrust of concentrated power, and of power itself at all levels. This form of government was 'altogether different' from the British form, under which the Crown was sovereign and the people were subjects." *Id.* at 274 (quoting Reporting of the General Assembly of Virginia, 4 Elliot's Debates). In *Sullivan*, a unanimous Court determined that the "altogether different" form of government ratified by the Founders necessitated an altogether "different degree of freedom" as to political debate than had existed in England. *Id.* at 275 (citation omitted). It was in the First Amendment that this unique freedom was enshrined and protected.

For the Court, the "central meaning of the First Amendment," 376 U.S. at 273, was the "right of free public discussion of the stewardship of public officials. . . ." *Id.* at 275. Thus, the First Amendment "was fashioned to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people." *Roth* v. *United States*, 354 U.S. 476, 484. "The maintenance of the opportunity for free political discussion to the end that government may be responsive to the will of the people and that changes may be obtained by lawful means, an opportunity essential to the security of the Republic, is a fundamental principle of our constitutional system." *Stromberg* v. *California*, 283 U.S. 359, 369. *Id.* at 269.[4]

The decision in *Sullivan* related specifically to libel law. But what made *Sullivan* so transformative—what made it, as the eminent First Amendment scholar Alexander Meiklejohn remarked, cause for "dancing in the streets"[5]—was this: it recognized (in Madison's words) that "[t]he people, not the government, possess the absolute sovereignty." *Sullivan*, 376 U.S. at 274. It emphasized that the First Amendment protected the "citizen-critic" of government. *Id.* at 282. It barred government itself from seeking damages from insults directed at it by its citizens. And it declared that "public discussion is a political duty." *Id.* at 270.

In the decades following *Sullivan*, these notions became embedded in the First Amendment—and thus the rule of law—through dozens of rulings of the Supreme Court. In particular, and following from, the First Amendment protection of public discussion is the right of the public to receive information about government. The First Amendment is not merely a bar on the affirmative suppression of speech; as Chief Justice Rehnquist has observed, "censorship . . . as often as not is exercised not merely by forbidding the printing of information in the possession of a correspondent, but in denying him access to places where he might obtain such information." William H. Rehnquist, "The First Amendment: Freedom, Philosophy, and the Law," 12 Gonz. L. Rev. 1, 17 (1976).

And, indeed, the Supreme Court has repeatedly affirmed Chief Justice Rehnquist's insight. "[T]he First Amendment goes beyond protection of the press and the self-expression of individuals to prohibit government from limiting the stock of information from which members of the public may draw." *First National Bank of Boston* v. *Bellotti,* 435 U.S. 765, 783 (1978); *Accord Kleindienst* v. *Mandel,* 408

U.S. 753, 762 (1972) ("In a variety of contexts this Court has referred to a First Amendment right to 'receive information and ideas.'").

The Supreme Court has thus ruled on four occasions that the First Amendment creates a right for the public to attend and observe criminal trials and related judicial proceedings, absent the most extraordinary of circumstances. *Richmond Newspapers, Inc.* v. *Virginia,* 448 U.S. 555 (1980); *Globe Newspaper Co.* v. *Superior Court,* 457 U.S. 596 (1982); *Press-Enterprise Co.* v. *Superior Court,* 464 U.S. 501 (1984); *Press-Enterprise Co.* v. *Superior Court,* 478 U.S. 1 (1986). The cases are particularly relevant to this application because they—perhaps more clearly than any others—illustrate the core constitutional principle that government may not arbitrarily foreclose the opportunity for citizens to obtain information central to the decisions they make—and the judgments they render—about government itself.

The teaching of this quartet of cases was aptly articulated by another Chief Justice, Warren Burger, writing for the Court in *Richmond Newspapers,* the first of the four decisions. The First Amendment, he wrote, "assur[es] freedom of communication on matters relating to the functioning of government." 448 U.S. at 575. Noting the centrality of the openness in which trials were conducted to that end, *id.* at 575, the Court stated that openness was an "indispensable attribute of an Anglo-American trial." *Id.* at 569. It had assured that proceedings were conducted fairly, and it had "discouraged perjury, the misconduct of participants, and decisions based on secret bias". *Id.* Most significantly, open trials had provided public acceptance of and support for the entire judicial process. It was with respect to this benefit of openness—the legitimacy it provides to the actions of government itself—that Chief Justice Burger (in the passage quoted above), observed that "[p]eople in an open society do not demand infallibility from their institutions, but it is difficult for them to accept what they are prohibited from observing." *Id.* at 562.[6]

To be sure, the Chief Justice in *Richmond Newspapers* rested heavily on the tradition of openness of criminal trials themselves—a difference of potential relevance because impeachment debates and deliberation have historically been conducted in secret. But, taken together, *Richmond Newspapers* and its progeny stand for propositions far broader than the constitutional value of any specific historical practice. The sheer range of proceedings endorsed as open by the Supreme Court suggests the importance under the First Amendment of public observation of the *act* of doing justice. Moreover, Supreme Court precedent itself suggests that the crucial right to see justice done prevails even where the specific kind of proceeding at issue had a history of being closed to the public. In *Globe Newspaper Co.,* the Court ruled that the First Amendment barred government from closing of trials of sexual offenses involving minor victims. It did so despite the "long history of exclusion of the public from trials involving sexual assaults, particularly those against minors." 457 U.S. at 614 (Burger, C.J., dissenting).

New York Times Co. v. *Sullivan* and *Richmond Newspapers* have significance which sweep far beyond their holdings that debate about public figures must be open and robust and that trials must be accessible to the public. Both cases—and all the later cases they have spawned—are about the centrality of openness to the process of self-governance. "[T]he right of access to criminal trials plays a particularly significant role in the functioning of the judicial process and the government as a whole. Public scrutiny of a criminal trial enhances the quality and safeguards the integrity of the fact-finding process, with benefits to both the defendant and to society as a whole. . . . And in the broadest terms, public access to criminal trials permits the public to participate in and serve as a check upon the judicial process—an essential component in our structure of self government." *Globe Newspaper Co.,* 457 U.S. at 606.

The First Amendment principles set forth above lead inexorably to a straightforward conclusion: the Senate should determine as a matter of First Amendment law that the public may attend and observe its debates and deliberations about the impeachment of President Clinton. No issue relates more to self-government. No determinations will have more impact on the public. No judgment of the Senate should be subject to more—and more informed—public scrutiny.

We are well aware that it is sometimes easier to be subjected to less public scrutiny and that some have the perception (which has sometimes proved accurate) that more can be accomplished more quickly in secret than in public. But this is, at its core, an argument against democracy itself, against the notion that it is the public itself which should sit in judgment on the performance of this body. It is nothing less than a rejection of the First Amendment itself. What Justice Brennan said two decades ago in the context of judicial proceedings is just as applicable here: "Secrecy of judicial action can only breed ignorance and distrust of courts and suspicion concerning the competence and impartiality of judges; free and robust reporting, criticism, and debate can contribute to public understanding of the rule of law and to

comprehension of the functioning of the entire criminal justice system, as well as improve the quality of that system by subjecting it to the cleansing effects of exposure and public accountability." *Nebraska Press Ass'n* v. *Stuart,* 427 U.S. 539, 587 (1976) (Brennan, J., concurring).

That it is the tradition of this body to conduct impeachment deliberations in closed session is not irrelevant. But neither should it be governing. The Senate has, after all, conducted only one presidential impeachment trial before this one. Our society in 1868—and, more significantly still, our law in 1868—was far different than it is today. As we have demonstrated, First Amendment jurisprudence as we know it—as it governs us and binds the Senate—is essentially a creature of the twentieth century. That jurisprudence assures public scrutiny, not public ignorance.

There are, to be sure, certain limited instances when closure of Senate deliberations may serve useful purposes, such as when they involve disclosure of matters of national security. But no such concerns are present here. And however proper it may be to analogize the Senate in some ways to a jury, none of the considerations that permits juries to deliberate out of the public eye are present here. The identities of the "jurors" here are well known, as, under the Senate rules, will be how each one voted. The Constitution does not offer protection to the "jurors" here from the force of public opinion for their votes for or against the conviction of President Clinton. They will face the full weight of public approval or rejection the next time they seek re-election. The Constitution does require that the reasons they give for their votes and other statements made in the course of debate be made in public so that both the debate and the votes themselves can be assessed by the people—the ultimate "Governors" in this republic.

CONCLUSION

From the time these proceedings commenced in the House of Representatives through the submission of this application, members of the Congress have repeatedly—and undoubtedly correctly—referred to the weighty constitutional obligations imposed upon them by this process. This application focuses on yet another constitutional obligation of the members of the Senate, an obligation reflected in the oath of office itself. It is that of adhering to the First Amendment. We urge the Senate to do so by permitting the public to observe its deliberations.

Dated: New York, NY, January 29, 1999.

Respectfully submitted,

DAVID HOKLER,
Senior Vice President and General Counsel, Cable News Network;
FLOYD ABRAMS,
DEAN RINGEL,
SUSAN BUCKLEY,
JONATHAN SHERMAN,
Cahill Gordon & Reindel; Counsel for Applicant Cable News Network.

FOOTNOTES

[1] Federalist No. 65; *see Nixon* v. *United States,* 506 U.S. 224, 233–34 (1993).

[2] It is precisely because the Senate possesses this power over its own rules that this application is made to the Senate rather than to any court.

[3] "Congress shall make no law . . . abridging the freedom of speech, or of the press . . . ."

[4] *See* Thomas Emerson, The System of Freedom of Expression 7 (1970); John Hart Ely, Democracy and Distrust 93–94 (1980); Robert Bork, Neutral Principles and Some First Amendment Problems, 47 Ind. L.J. 1, 23 (1971); *see generally* Alexander Meiklejohn, Free Speech and Its Relation to Self-Government (1948).

[5] Harry Kalven, *The New York Times Case: A Note on "The Central Meaning of the First Amendment,"* 1964 Supp. Ct. Rev. 191, 211 n. 125.

[6] The right of the public and the press to have access "to news or information concerning the operations and activities of government," a right predicated in part on the principles set forth in cases such as *Richmond Newspapers* and its progeny, has been recognized in a variety of contexts outside the courtroom. *Cable News Network, Inc.* v. *American Broadcasting Companies, Inc.,* 518 F. Supp. 1238, 1243 (N.D. Ga. 1981) (court enjoins Executive's expulsion of television networks from press travel pool covering the President); *see also Sherrill* v. *Knight,* 569 F.2d 124 (D.C. Cir. 1977) (court requires White House to publish standards for denying press accreditation on security grounds).

IMPEACHMENT TRIAL—FINDINGS OF FACT PROPOSALS

Mr. FEINGOLD. Mr. Chief Justice, on January 28, I was the only Democratic Senator to cross party lines and oppose the motion to dismiss. I felt it would be unwise to end this trial prior to a more complete presentation of evidence and a final vote on the articles of impeachment themselves. Nonetheless, I had no doubt that a motion to dismiss was a constitutional way to end the trial, if a majority of Senators had supported the motion.

The Senate must keep in mind at every step in this process that our actions will be scrutinized not just by our constituents today and for the rest of the trial, but also by history. If another impeachment trial should occur 130 years from now, the record of this trial will serve as an important precedent for the Senate as it determines how to proceed. It is our responsibility to abide by the Constitution as closely as possible throughout the remainder of this trial. My votes on House managers' motions on February 4 were based on the same concerns about prudence and precedent that motivated my earlier votes on the motion to dismiss and calling witnesses.

With the judgment of history awaiting us, I did have serious concerns about the constitutionality of proposals that the Senate should adopt so-called findings of fact before the Senate votes on the articles of impeachment themselves. It now appears that support for such proposals has waned, and the Senate will not be called upon to vote on them. Nonetheless, I want to explain my opposition to such proposals for the record.

Findings of fact would allow a simple 51-vote majority of the Senate to state the judgment of the Senate on the facts of this case and, in effect, to determine the President's "guilt" of the crimes alleged in the articles. But the Constitution specifically requires that two-thirds of the Senate must convict the President on the articles in order to impose any sanction on him. The specific punishment set out by the Constitution if the Senate convicts is removal from office, and possibly disqualification from holding future office.

The supermajority requirement makes the impeachment process difficult, and the framers intended that it be difficult. They were very careful to avoid making conviction and removal of the President something that could be accomplished for purely partisan purposes. In only 23 out of 105 Congresses and in only six Congresses in this century has one party held more than a two-thirds majority in the Senate. Never in our history has a President faced a Senate controlled by the other party by more than a two-thirds majority. The Republican party had nearly 80 percent of the seats in the Senate that in 1868 tried Andrew Johnson. Johnson was at that time also a Republican, although he had been a Democrat before being chosen by Abraham Lincoln to be his Vice President in 1864. The great difficulty of obtaining a conviction in the Senate on charges that are seen as motivated by partisan politics has discouraged impeachment efforts in the past. Adding findings of fact to the process would undercut this salutary effect of the supermajority requirement for conviction.

The Senate must fulfill its constitutional obligation and determine whether the President's acts require conviction and removal.

The critical constitutional tool of impeachment should not be available simply to attack or criticize the President. Impeachment is unique. It is the sole constitutionally sanctioned encroachment on the principle of separation of powers, and it must be used sparingly. If findings of fact had been adopted in this trial, it would have set a dangerous precedent that might have led to more frequent efforts to impeach.

The ability of a simple majority of the Senate to determine the President's guilt of the crimes alleged would distort the impeachment process and increase the specter of partisanship. When the Senate is sitting as a Court of Impeachment, its job is simply to acquit or convict. And that is the only judgment that the Senate should make during an impeachment trial.

MOTIONS PERTAINING TO WITNESS DEPOSITIONS AND TESTIMONY

Mr. DODD. Mr. Chief Justice, on Thursday, February 4, the Senate, sitting as a Court of Impeachment, considered several motions pertaining to the depositions and live testimony of witnesses Monica Lewinsky, Vernon Jordan, and Sidney Blumenthal. I wish to speak briefly on the important issues raised by several of these motions.

First, let me say that I am pleased that the Senate, by a bipartisan vote of 30–70, voted not to compel the live testimony of Ms. Lewinsky. In my view, this was a sound decision to support the expeditious conduct of this trial, preserve the decorum of the Senate, and respect the privacy of this particular witness.

Unfortunately, the Senate retreated from these same worthy aims in deciding to permit the videotaped depositions of Ms. Lewinsky, Mr. Jordan, and Mr. Blumenthal to be entered into evidence and broadcast to the public. I believe that this decision was erroneous for three basic reasons:

First, it needlessly prolonged the trial. Prior to February 4, Senators had an opportunity to view the depositions of each of these witnesses—not once, but repeatedly. Numerous times we could have viewed the content of their testimony, the tone of their answers, and their demeanor while under oath. By requiring that Senators view portions of these depositions again on the floor, in whole or in part, the managers' motion unnecessarily required the Senate to convene for an entire day. We learned nothing by viewing excerpts of the depositions on the floor that we had not already had an opportunity to learn by viewing those depositions previously, either on videotape or, in the case of myself and five other Senators, in person.

Second, allowing the depositions to be publicly aired on the Senate floor exaggerated their importance. Even Manager HYDE has acknowledged that these depositions broke no material new ground in this case. Allowing their broadcast thus was not only an injudicious use of the Senate's time, it also elevated the significance of this particular testimony over all other sworn testimony taken in this matter—solely by virtue of the fact that it was recently videotaped. Broadcasting these minuscule and marginal portions of the record—while not broadcasting other depositions—does not illuminate the record so much as distort it. The distortion is only com-

pounded by broadcasting selected portions of those depositions rather than the depositions in their entirety. The President's counsel obviously had an opportunity to rebut the managers' presentation and characterization of those portions. However, that rebuttal only underscores the fact that the managers' motion to use these videotapes gave the videotapes a prominence and gravity that they do not merit.

Third, under the circumstances, publicly airing portions of these depositions constituted a needless invasion of the privacy of the witnesses whose testimony was videotaped. Let us remember that these individuals are not public figures who have willingly surrendered a portion of their privacy as a consequence of their freely chosen status. They are private citizens, reluctantly drawn into legal proceedings. They have attempted to discharge their obligations in those proceedings. But that obligation does not extend to the public broadcast of their videotaped depositions—particularly given that they have testified repeatedly before, and that their videotaped testimony contains no new material information. The privacy rights of these individuals deserved greater consideration by the managers and by the Senate. The managers did not need to force the images of these witnesses into the living rooms and family rooms of America in order to present their case. The Senate did not need to allow that to happen in order to meet its constitutional responsibility in this matter.

For these reasons, I opposed the managers' motion to broadcast the deposition videotapes. In my view, the time has come to bring this matter to an end. The record is voluminous, the arguments have been made. We know enough to decide the questions before us. That is why I supported Senator DASCHLE's motion to proceed to final arguments and a vote on each of the articles of impeachment. I regret that his motion was not adopted, and that instead the Senate decided to needlessly prolong this matter without sufficient regard for the privacy of the witnesses deposed last week. However, that said, I am pleased that, barring any unforseen developments, this trial will at last conclude later this week. It is time for the Senate to move on to the other important business of the country that we were elected to address.

WEDNESDAY, FEBRUARY 10, 1999

[From the Congressional Record]

The Senate met at 10:06 a.m. and was called to order by the Chief Justice of the United States.

TRIAL OF WILLIAM JEFFERSON CLINTON, PRESIDENT OF THE UNITED STATES

The CHIEF JUSTICE. The Senate will convene as a Court of Impeachment. The Chaplain will offer a prayer.

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Sovereign God, thank You for the good men and women of this Senate. Today we ask what should be done when really good people disagree. You have shown us so clearly what should and should not be done. When the fabric of our human relationships is being frayed, it is time to deepen our relationship with You. Draw each Senator into healing communion with You that will give physical strength and spiritual assurance of Your unqualified love for him or her. Then in the inner heart give Your peace and direction. Give each Senator the courage to speak truth as she or he hears it and knows it. When this trial is finished, may none feel the pangs of unspoken convictions.

Dear God, we also know there is something we dare not do when good people disagree. You do not condone the impugning of other people's characters because they hold different convictions. You do not want us to break our unity or the bond of sacred friendship. Bless these good Senators as they press forward together with love for You, America, and each other. In the unity of Your Spirit and the bond of peace. Amen.

The CHIEF JUSTICE. The Sergeant at Arms will make the proclamation.

The Sergeant at Arms, James W. Ziglar, made proclamation as follows:

Hear ye! Hear ye! Hear ye! All persons are commanded to keep silent, on pain of imprisonment, while the Senate of the United States is sitting for the trial of the articles of impeachment exhibited by the House of Representatives against William Jefferson Clinton, President of the United States.

THE JOURNAL

The CHIEF JUSTICE. If there is no objection, the Journal of proceedings of the trial is approved to date.

The majority leader is recognized.

ORDER OF PROCEDURE

Mr. LOTT. Mr. Chief Justice, in a few moments, the Senate will resume the closed session in order to allow Members to continue to deliberate the two articles of impeachment. Members are reminded that the motion adopted yesterday allows for a RECORD to be printed on the day of the vote on the articles which could contain Senators' final statements if they choose to have them printed.

Also, Senator DASCHLE was just noting that while Senators have been careful not to comment on the discussion in closed session, we still should use a lot of discretion in going out and talking to the media about the details of what is happening here. I don't think there have been any violations, but use a lot of discretion. I would prefer we not even talk about which Senator spoke or how many spoke. I think we need to be careful in doing that.

I expect the Senate will be in session until approximately 6. We will confer with the Senators, the leadership, and the Chief Justice, and see how the discussions are going, and the speeches, how many are being made. Perhaps we would wrap it up before that. It would just depend on how much endurance we have today.

We will have a break from 12 until about 1:15, one hour and 15 minutes for lunch, to allow the Chief Justice some time to return to the Supreme Court and then come back.

I expect the Senate to convene again tomorrow at 10 a.m. in order to try to conclude the debate and vote on the articles if at all possible by 5 o'clock on Thursday. If we are still having speeches, if we can't do it, we would certainly just go over until Friday, but I think we need to talk about that goal of 5 o'clock on Thursday.

Mr. REID. Thursday.

Mr. LOTT. Also, I know some Senators are still on the way here from committee meetings. There are only two or three going on today, but we didn't give them much notice that we were going to begin at 10, but we are notifying everybody now that we will come in at 10 tomorrow, so that they will go ahead and be able to take action this morning to cancel those hearings and be here sharply at 10 o'clock.

Again, we will alternate today, across the aisle, with the speakers going for up to 15 minutes.

Senator INHOFE is scheduled to be our first speaker today.

Mr. COVERDELL addressed the Chair.

Mr. LOTT. I will be glad to yield to Senator COVERDELL.

Mr. COVERDELL. Mr. Chief Justice, I ask unanimous consent to pose a point of clarification to the majority leader.

The CHIEF JUSTICE. Without objection.

Mr. COVERDELL. Mr. Leader, I am still a little confused about this posting of a statement in the RECORD. Is it possible for a Member of the Senate to submit to the closed session their statement rather than speaking? I think that might be desirable on the part of some.

Mr. LOTT. I think the answer to that is yes. You can do that.

Mr. COVERDELL. In other words, if I chose, I could submit the statement in my sequence to the RECORD, and subsequently, at my choice, decide whether it will be made part of the CONGRESSIONAL RECORD subsequent to the close?

Mr. LOTT. I believe that is correct.

Mr. COVERDELL. I thank the Leader.

Mr. REID. Mr. Leader, and I would also say they would all appear the same as if they were spoken or not spoken.

Mr. LOTT. Correct.

Mr. LEAHY. Will the distinguished majority leader yield?

Mr. LOTT. I yield to the Senator from Vermont.

Mr. LEAHY. Mr. Chief Justice—and I appreciate the courtesy of my good friend from Mississippi—I notice, as he has, that there are a lot of empty seats here in the Chamber. I realize at one time we thought we were coming in at noon, to have committee meetings.

If these statements are not made in the RECORD, the only time we are going to have a chance to discuss with each other what our thoughts are is in this closed session, by being here. I also think, in respect to the Chief Justice, we should be doing that.

I am inclined, I say to my friend from Mississippi, to suggest the absence of a quorum. I am withholding, just for a moment, doing that. But if we are going to be off in committee meetings, I don't think that does service to the intent of this closed door hearing.

I hope that both leaders—and I have discussed this with the distinguished Democratic leader, too—would urge Members to be

here. Nothing could be more important than this on our agenda today and tomorrow.

Mr. LOTT. Mr. Chief Justice, I certainly agree with that. We are going to have to have a momentary quorum call, just to get the doors closed and then officially go forward. We will call and make sure all the committee hearings are being shut down. Actually, I think Members are coming in steadily, and within a moment we are probably going to have almost all the Senators here. But we will take just a couple of minutes to notify committees to complete their actions and for Senators to come on the floor.

Mr. LEAHY. If I might complete then, Mr. Chief Justice, out of respect to my friend from Mississippi, and in courtesy to what he said, I will not make that suggestion, knowing that he is going to make a similar suggestion anyway.

Mr. GRAMM. Will the distinguished majority leader yield?

Mr. LOTT. I will be glad to yield.

Mr. GRAMM. Mr. Chief Justice, we are eager to get on with the debate. We have a quorum present. The Senator can make a point of order that a quorum is not present, but it is obvious to the naked eye that a quorum is present.

Mrs. HUTCHISON. Mr. Leader, would you yield?

Mr. LOTT. I will be glad to yield.

Mrs. HUTCHISON. I think it is important, for the record, that it be known there are at least 60 to 70 Members in the Chamber, ready to proceed.

Mr. LOTT. My count is we have about 70 Members here. I am sure we will have a full complement here momentarily, so we can lock the doors and give a few more Senators a little more time to get here. Would the Senator from Alaska like to speak?

Mr. MURKOWSKI. May I ask for clarification relative to submitting statements in the RECORD and having them printed? What day would they be printed in the RECORD, assuming that we finish Thursday? The Friday RECORD?

Mr. LOTT. The day of the vote, which means it would come out, I guess, the next day. So if we vote on Thursday—if we vote on Friday, then it would be available, I guess, Saturday morning. If we vote Thursday night, it would be available in the RECORD Friday morning.

Mr. MURKOWSKI. I thank the leader.

Mr. LOTT. If the Senators choose.

Mr. Chief Justice, I suggest the absence of a quorum.

The CHIEF JUSTICE. Would the leader wish we go into closed session before the quorum call?

Mr. LOTT. Yes, Mr. Chief Justice, and then suggest the absence of a quorum.

The CHIEF JUSTICE. The Senate will now resume closed session for final deliberations on the articles of impeachment.

CLOSED SESSION

[At 10:16 a.m., the doors of the Chamber were closed. The proceedings of the Senate were held in closed session until 6:21 p.m.; whereupon, the Senate resumed open session.]

OPEN SESSION

Mr. LOTT. Mr. Chief Justice, I now ask unanimous consent that the Senate return to open session.

The CHIEF JUSTICE. Without objection, it is so ordered.

ORDERS FOR THURSDAY, FEBRUARY 11, 1999

Mr. LOTT. Mr. Chief Justice, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 10 a.m. on Thursday, February 11. I further ask that upon reconvening on Thursday and immediately following the prayer, the majority leader be recognized to make a brief statement with respect to the Senate schedule. I further ask unanimous consent that following the majority leader's comments, the Senate resume final deliberations in closed session on the articles of impeachment.

The CHIEF JUSTICE. In the absence of objection, it is so ordered.

PROGRAM

Mr. LOTT. We will reconvene tomorrow morning at 10 o'clock. We hope to be able to finish tomorrow afternoon, Mr. Chief Justice, but we have to make a ot better progress than we did today.

ADJOURNMENT UNTIL 10 A.M. TOMORROW

Mr. LOTT. If there is no further business, I ask unanimous consent that the Senate adjourn under the previous order.

There being no objection, at 6:21 p.m., the Senate, sitting as a Court of Impeachment, adjourned until Thursday, February 11, 1999, at 10 a.m.

THURSDAY, FEBRUARY 11, 1999

[From the Congressional Record]

The Senate met at 10:07 a.m. and was called to order by the Chief Justice of the United States.

TRIAL OF WILLIAM JEFFERSON CLINTON, PRESIDENT OF THE UNITED STATES

The CHIEF JUSTICE. The Senate will convene as a Court of Impeachment. The Chaplain will offer a prayer.

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Holy God, Who allows beginnings and brings an end, a time for healing, a time to mend, we ask You to pour out Your palpable, unifying power on this Senate. Today, may the Senators count on You more than they count votes. This is a time neither for gloating over victory nor for grimness over losing, but rather a period for grief over all that has brought us to this day. We are one Nation

under You; we repent as a Nation; we turn from conditional ethics and seek to return to the absolutes of Your Commandments.

Thank You, Lord, for the clarion convictions expressed during this trial by so many Senators of both parties that morals do matter and character does count. May this shared, common commitment unite them as they lead this Nation. Now, as their chaplain, I hold them all before Your grace and mercy; as their friend, I intercede for their spiritual strength and courage. When the final votes are taken, hold them together in the oneness America so desperately needs them to exemplify. Help them to model rectitude and reconciliation. By Your power, the winner will be neither the Republicans nor the Democrats, but the American people. In Your holy Name. Amen.

The CHIEF JUSTICE. The Sergeant at Arms will make the proclamation.

The Sergeant at Arms, James W. Ziglar, made proclamation as follows:

Hear ye! Hear ye! Hear ye! All persons are commanded to keep silent, on pain of imprisonment, while the Senate of the United States is sitting for the trial of the articles of impeachment exhibited by the House of Representatives against William Jefferson Clinton, President of the United States.

THE JOURNAL

The CHIEF JUSTICE. If there is no objection, the Journal of proceedings of the trial is approved to date.

The majority leader is recognized.

Mr. LOTT. Thank you, Mr. Chief Justice.

ORDER OF PROCEDURE

Mr. LOTT. This morning the Senate will resume final deliberations in closed session. Our best guess, at this time, leaves approximately 37 Senators still intending to speak. It is possible that we could conclude and have the final votes this afternoon or late this evening, but I don't think that is going to be possible at this time. When we do approach that point, I would like to do it in an orderly fashion, that Members and those who are interested will be given notice. We have some business we would have to conclude, also, after all the deliberations have been complete. I will confer throughout the day with Senator DASCHLE to see how it is going, and as soon as we can see clearly when we would want to actually move to the final vote, we will notify all the Senators.

We will also take a lunch break sometime today between 12 and 12:30, and we will have, of course, some breaks throughout the day to take some refreshments.

I yield the floor to allow the Chief Justice to close the session.

The CHIEF JUSTICE. The Senate will now go into closed session for final deliberations on the articles of impeachment. The Sergeant at Arms is directed to clear the galleries and close the doors of the Senate Chamber.

CLOSED SESSION

[At 10:11 a.m., the doors of the Chamber were closed. The proceedings of the Senate were held in closed session until 7:00 p.m., at which time the following occurred.]

OPEN SESSION

Mr. LOTT. Mr. Chief Justice, I ask unanimous consent that the Senate resume open session.

The CHIEF JUSTICE. Without objection, it is so ordered.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. LOTT. I ask unanimous consent that the Court of Impeachment stand in adjournment until 9:30 tomorrow morning, and the Senate then immediately proceed to closed session. I ask unanimous consent the Senate now resume legislative session in order to conduct some housekeeping business.

The CHIEF JUSTICE. Without objection, it is so ordered.

Thereupon, at 7 p.m. the Senate, sitting as a Court of Impeachment, adjourned until Friday, February 12, 1999, at 9:30 a.m.

AUTHORIZING THE TAKING OF PHOTOGRAPHS IN THE CHAMBER OF THE U.S. SENATE

Mr. LOTT. Mr. President, I send a resolution to the desk regarding the taking of pictures in the Senate Chamber during the impeachment vote and ask unanimous consent the resolution be considered agreed to and the motion to reconsider be laid upon the table.

Mr. WELLSTONE. Mr. President, I object. I would like to have a voice vote.

Mrs. BOXER. Just a voice vote.

Mr. LOTT. Mr. President, I move that this resolution be adopted by the Senate.

The PRESIDING OFFICER (Mr. ENZI). The clerk will report.

The legislative clerk read as follows:

A resolution (S. Res. 36) authorizing the taking of photographs in the Chamber of the United States Senate.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The resolution (S. Res. 36) was agreed to, as follows:

S. RES. 36

Resolved, That paragraph 1 of rule IV of the Rules for the Regulation of the Senate Wing of the United States Capitol (prohibiting the taking of pictures in the Senate Chamber) be temporarily suspended for the sole and specific purpose of permitting photographs to be taken on February 11 or 12, 1999, during the roll call vote on the Articles of Impeachment in the impeachment trial of the President of the United States.

SEC. 2. The Sergeant at Arms of the Senate is authorized and directed to make the necessary arrangements therefor, which arrangements shall provide for a minimum of disruption to Senate proceedings.

APPOINTING A COMMITTEE TO ESCORT THE CHIEF JUSTICE

Mr. LOTT. Mr. President, I ask unanimous consent the Presiding Officer be authorized to appoint a committee of Senators, three upon the recommendation of the majority leader and three upon the recommendation of the minority leader, to escort the Chief Justice out of the Senate Chamber at the conclusion of the Court of Impeachment.

The PRESIDING OFFICER. Without objection, the Chair, on behalf of the majority leader, appoints Mr. THURMOND of South Carolina, Mr. ROTH of Delaware, and Mr. DOMENICI of New Mexico, and, on behalf of the Democratic leader, Mr. SARBANES of Maryland, Mr. MOYNIHAN of New York, and Mrs. LINCOLN from Arkansas.

UNANIMOUS CONSENT AGREEMENT—CENSURE RESOLUTION

Mr. LOTT. Mr. President, I ask unanimous consent that if Senator FEINSTEIN offers her motion to suspend the rules in order to attempt to consider a censure resolution, and immediately following the reading of the motion by the clerk, Senator GRAMM of Texas be recognized to offer a motion to postpone the Feinstein motion indefinitely.

I further ask that immediately following the reporting of the Gramm motion by the clerk, the Senate proceed to a vote on the Gramm motion, immediately, all without any intervening debate or action.

I further ask that following the vote, if two-thirds of the Senate fail to defeat the motion to postpone, then the motion to suspend is withdrawn and that no further motions relative to censure be in order prior to this week's adjournment of the Senate.

I finally ask that following that vote there be up to 2 hours of morning business to be equally divided between the two leaders or their designees.

And before the Chair puts the question on the unanimous consent request, I just want to advise my colleagues on both sides, this has been cleared on both sides of the aisle, by the sponsor, Senator FEINSTEIN, and by Senator GRAMM on the other side. I believe this is a fair way, all things considered, to deal with this matter.

The PRESIDING OFFICER. Without objection, it is so ordered.

106TH CONGRESS
1ST SESSION

S. RES. 36

Authorizing the taking of photographs in the Chamber of the United States Senate.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 11, 1999

Mr. LOTT (for himself, Mr. DASCHLE, Mr. MCCONNELL, and Mr. DODD) submitted the following resolution; which was considered and agreed to

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RESOLUTION

Authorizing the taking of photographs in the Chamber of the United States Senate.

Resolved, That paragraph 1 of rule IV of the Rules for the Regulation of the Senate Wing of the United States Capitol (prohibiting the taking of pictures in the Senate Chamber) be temporarily suspended for the sole and specific purpose of permitting photographs to be taken on February 11 or 12, 1999, during the roll call vote on the Articles of Impeachment in the impeachment trial of the President of the United States.

SEC. 2. The Sergeant at Arms of the Senate is authorized and directed to make the necessary arrangements

1 therefor, which arrangements shall provide for a minimum
2 of disruption to Senate proceedings.

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FRIDAY, FEBRUARY 12, 1999

[From the Congressional Record]

The Senate met at 9:36 a.m. and was called to order by the Chief Justice of the United States.

TRIAL OF WILLIAM JEFFERSON CLINTON, PRESIDENT OF THE UNITED STATES

The CHIEF JUSTICE. The Senate will convene as a Court of Impeachment. The Chaplain will offer a prayer.

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Gracious God, whose love for this Nation has been displayed so magnificently through our history, we praise You that Your presence fills this historic Chamber and enters into the minds of the Senators gathered here. Each of them is here by Your divine appointment. Together they claim Your promise, "Call upon Me in the day of trouble: I will deliver you."—Ps.50:15. We call upon You on this day of trouble in America as this impeachment trial comes to a close. You have enabled an honest, open debate of alternative solutions. Soon a vote will be taken. You have established a spirit of unity in the midst of differences. Most important of all, we know that we can trust You with the results. You can use what is decided and continue to accomplish Your plans for America. We entrust to Your care the President and his family. Use whatever is decided today to enable a deeper experience of Your grace in his life and healing in his family. We commit this day to You and thank You for the hope that fills our hearts as we place our complete trust in You. You are our Lord and Saviour. Amen.

The CHIEF JUSTICE. The Sergeant at Arms will make the proclamation.

The Sergeant at Arms, James W. Ziglar, made proclamation as follows:

Hear ye! Hear ye! Hear ye! All persons are commanded to keep silent, on pain of imprisonment, while the Senate of the United States is sitting for the trial of the articles of impeachment exhibited by the House of Representatives against William Jefferson Clinton, President of the United States.

THE JOURNAL

The CHIEF JUSTICE. If there is no objection, the Journal of proceedings of the trial is approved to date.

The majority leader is recognized.

Mr. LOTT. Thank you, Mr. Chief Justice.

ORDER OF PROCEDURE

Mr. LOTT. For the information of all Senators, later on today, the Secretary of the Senate will be putting at each Senator's desk

something I think you will enjoy reading later. It is the prayers of the Chaplain during the impeachment trial. Subsequently, we plan to put it in a small pamphlet because they truly have been magnificent. We thought you each would like to have copies.

The Senate will resume final deliberations now in the closed session. Thank goodness. At this point in the proceedings, there are approximately eight Members who still wish to speak or submit part of their speech into the RECORD.

Following those final speeches, the Senate will resume open session and proceed to the votes on the two articles of impeachment. I estimate that those votes will begin at approximately 11, 11:30. However, the exact time will depend on the length of the remaining speeches, and also we will have to have a few minutes to open the Chamber and the galleries so that our constituents and our families can enter the galleries if they would like to.

Following those votes, all Senators should remain at their desks as the Senate proceeds to several housekeeping items relating to the adjournment of the Court of Impeachment. So again, I emphasize, please, after the votes, don't rush out of the Chamber because we have some very important proceedings to attend to, and I think you will enjoy them if you will stay and participate.

Under the consent agreement reached last night, following those votes, a motion relating to censure may be offered by the Senator from California, Mrs. FEINSTEIN. If offered, Senator GRAMM will be recognized to offer a motion relative to the Feinstein motion, with a vote to occur on the Gramm motion. Therefore, Senators may anticipate an additional vote or votes following the votes on the articles.

I thank the Senators. And I believe we are ready to proceed to the closed session.

Mrs. BOXER. Will the majority leader yield for a question?

Mr. LOTT. Yes.

Mrs. BOXER. Will there be intervening debate or no debate on any of those votes?

Mr. LOTT. In the UC that was reached last night, I believe we have 2 hours, which will be equally divided, for Senators to submit statements at that point or to make speeches if they would like. So after the votes, yes.

Mrs. BOXER. That is the question. Yes.

Mr. LOTT. I presume we will go on for a couple hours—2 or 3 o'clock in the afternoon, yes.

UNANIMOUS CONSENT AGREEMENT—PRINTING OF STATEMENTS IN THE RECORD AND PRINTING OF SENATE DOCUMENT OF IMPEACHMENT PROCEEDINGS

Mr. LOTT. I would like to clarify one other matter. Senators will recall the motion approved February 9, 1999, which permitted each Senator to place in the CONGRESSIONAL RECORD his or her own statements made during final deliberations in closed session.

I ask unanimous consent that public statements made by Senators subsequent to the approval of that motion, with respect to his or her own statements made during the closed session, be deemed

to be in compliance with the Senate rules. This would permit a Senator to release to the public his or her statement made during final deliberations in closed session, except that, in doing so, a Senator may not disclose any remarks of the other Senators made during deliberations, without the prior consent, of course, of that Senator.

I further ask unanimous consent that Senators have until Tuesday, February 23, 1999—that would be the Tuesday after we come back—to have printed statements and opinions in the CONGRESSIONAL RECORD, if they choose, explaining their votes.

Finally, I ask unanimous consent that the Secretary be authorized to include these statements, along with the full record of the Senate's proceedings, the filings by the parties, and the supplemental materials admitted into evidence by the Senate, in a Senate document printed under the supervision of the Secretary of the Senate. That will complete the documentation of the Senate's handling of these impeachment proceedings.

Mr. REID. Mr. Leader, point of clarification. I had a couple of Members ask, does it take an affirmative act of a Senator to get their speech placed in the RECORD or does it happen automatically?

Mr. LOTT. I believe it does take an affirmative act. It is not automatic.

Mr. REID. To whom should that be given?

Mr. LOTT. It should be given to the clerks at the desk, or to Marty on your side, or your secretary of the minority, or the secretary of the majority. They will get it into the RECORD at the right place.

So I believe, once again, we are ready to go to our closed session.

Mrs. HUTCHISON. Will the majority leader yield for a question?

Mr. LOTT. Yes.

Mrs. HUTCHISON. It does not require each person to ask unanimous consent to insert their remarks, just giving it?

Mr. LOTT. Yes. That has already been cleared.

I believe we have a unanimous consent request propounded.

The CHIEF JUSTICE. Without objection, it is so ordered.

The Senate will now go into closed session to complete its deliberations on the articles of impeachment. The Sergeant at Arms is directed to clear the galleries and close the doors of the Senate Chamber.

Mr. LOTT. Mr. Chief Justice, I suggest the absence of a quorum.

The CHIEF JUSTICE. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

CLOSED SESSION

[At 9:44 a.m., the doors of the Chamber were closed. The proceedings of the Senate were held in closed session until 12:04 p.m.; whereupon, the Senate resumed open session.]

OPEN SESSION

Mr. LOTT. Will Senators return to their desks? Managers, thank you for joining us. Would Senators stand, and the gallery, as the Chief Justice enters the Chamber, please.

The CHIEF JUSTICE. The Senate will be in order.

Mr. LOTT. Mr. Chief Justice, Members of the Senate, the Senate has met almost exclusively as a Court of Impeachment since January 7, 1999, to consider the articles of impeachment against the President of the United States. The Senate meets today to conclude this trial by voting on the articles of impeachment, thereby, fulfilling its obligation under the Constitution. I believe we are ready to proceed to the votes on the articles. I yield the floor.

The CHIEF JUSTICE. The Chair would inform those in attendance in the Senate galleries that under rule XIX of the Standing Rules of the Senate, demonstrations of approval or disapproval are prohibited, and it is the duty of the Chair to enforce order on its own initiative.

ARTICLE I

The CHIEF JUSTICE. The clerk will now read the first Article of impeachment.

The legislative clerk read as follows:

ARTICLE I

In his conduct while President of the United States, William Jefferson Clinton, in violation of his constitutional oath faithfully to execute the office of President of the United States and, to the best of his ability, preserve, protect, and defend the Constitution of the United States, and in violation of his constitutional duty to take care that the laws be faithfully executed, has willfully corrupted and manipulated the judicial process of the United States for his personal gain and exoneration, impeding the administration of justice, in that:

On August 17, 1998, William Jefferson Clinton swore to tell the truth, the whole truth, and nothing but the truth before a Federal grand jury of the United States. Contrary to that oath, William Jefferson Clinton willfully provided perjurious, false and misleading testimony to the grand jury concerning one or more of the following: (1) the nature and details of his relationship with a subordinate Government employee; (2) prior perjurious, false and misleading testimony he gave in a Federal civil rights action brought against him; (3) prior false and misleading statements he allowed his attorney to make to a Federal judge in that civil rights action; and (4) his corrupt efforts to influence the testimony of witnesses and to impede the discovery of evidence in that civil rights action.

In doing this, William Jefferson Clinton has undermined the integrity of his office, has brought disrepute on the Presidency, has betrayed his trust as President, and has acted in a manner subversive of the rule of law and justice, to the manifest injury of the people of the United States.

Wherefore, William Jefferson Clinton, by such conduct, warrants impeachment and trial, and removal from office and disqualification to hold and enjoy any office of honor, trust, or profit under the United States.

The CHIEF JUSTICE. The Chair reminds the Senate that each Senator, when his or her name is called, will stand in his or her place and vote "guilty" or "not guilty" as required by rule XXIII of the Senate rules on impeachment.

The Chair also refers to article I, section 3, clause 6, of the Constitution regarding the vote required for conviction on impeachment: "[N]o Person shall be convicted without the Concurrence of two-thirds of the Members present."

VOTE ON ARTICLE I

The CHIEF JUSTICE. The question is on the first article of impeachment. Senators, how say you? Is the respondent, William Jefferson Clinton, guilty or not guilty? A rollcall vote is required.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. SPECTER (When his name was called). Not proven, therefore, not guilty.

The result was announced—guilty 45, not guilty 55, as follows:

[Rollcall Vote No. 17]

[Subject: Article I—Articles of Impeachment Against President William Jefferson Clinton]

GUILTY—45

Abraham	Enzi	Lugar
Allard	Fitzgerald	Mack
Ashcroft	Frist	McCain
Bennett	Gramm	McConnell
Bond	Grams	Murkowski
Brownback	Grassley	Nickles
Bunning	Gregg	Roberts
Burns	Hagel	Roth
Campbell	Hatch	Santorum
Cochran	Helms	Sessions
Coverdell	Hutchinson	Smith (NH)
Craig	Hutchison	Smith (OR)
Crapo	Inhofe	Thomas
DeWine	Kyl	Thurmond
Domenici	Lott	Voinovich

NOT GUILTY—55

Akaka	Feinstein	Moynihan
Baucus	Gorton	Murray
Bayh	Graham	Reed
Biden	Harkin	Reid
Bingaman	Hollings	Robb
Boxer	Inouye	Rockefeller
Breaux	Jeffords	Sarbanes
Bryan	Johnson	Schumer
Byrd	Kennedy	Shelby
Chafee	Kerrey	Snowe
Cleland	Kerry	Specter
Collins	Kohl	Stevens
Conrad	Landrieu	Thompson
Daschle	Lautenberg	Torricelli
Dodd	Leahy	Warner
Dorgan	Levin	Wellstone
Durbin	Lieberman	Wyden
Edwards	Lincoln	
Feingold	Mikulski	

The CHIEF JUSTICE. On this article of impeachment, 45 Senators having pronounced William Jefferson Clinton, President of the United States, guilty as charged, 55 Senators having pronounced him not guilty, two-thirds of the Senators present not having pronounced him guilty, the Senate adjudges that the respondent, William Jefferson Clinton, President of the United States, is not guilty as charged in the first article of impeachment.

ARTICLE II

The CHIEF JUSTICE. The clerk will read the second article of impeachment.

The legislative clerk read as follows:

ARTICLE II

In his conduct while President of the United States, William Jefferson Clinton, in violation of his constitutional oath faithfully to execute the office of President of the United States and, to the best of his ability, preserve, protect, and defend the Constitution of the United States, and in violation of his constitutional duty to take care that the laws be faithfully executed, has prevented, obstructed, and impeded the administration of justice, and has to that end engaged personally, and through his subordinates and agents, in a course of conduct or scheme designed to delay, impede, cover up, and conceal the existence of evidence and testimony related to a Federal civil rights action brought against him in a duly instituted judicial proceeding.

The means used to implement this course of conduct or scheme included one or more of the following acts:

(1) On or about December 17, 1997, William Jefferson Clinton corruptly encouraged a witness in a Federal civil rights action brought against him to execute a sworn affidavit in that proceeding that he knew to be perjurious, false and misleading.

(2) On or about December 17, 1997, William Jefferson Clinton corruptly encouraged a witness in a Federal civil rights action brought against him to give perjurious, false and misleading testimony if and when called to testify personally in that proceeding.

(3) On or about December 28, 1997, William Jefferson Clinton corruptly engaged in, encouraged, or supported a scheme to conceal evidence that had been subpoenaed in a Federal civil rights action brought against him.

(4) Beginning on or about December 7, 1997, and continuing through and including January 14, 1998, William Jefferson Clinton intensified and succeeded in an effort to secure job assistance to a witness in a Federal civil rights action brought against him in order to corruptly prevent the truthful testimony of that witness in that proceeding at a time when the truthful testimony of that witness would have been harmful to him.

(5) On January 17, 1998, at his deposition in a Federal civil rights action brought against him, William Jefferson Clinton corruptly allowed his attorney to make false and misleading statements to a Federal judge characterizing an affidavit, in order to prevent questioning deemed relevant by the judge. Such false and misleading statements were subsequently acknowledged by his attorney in a communication to that judge.

(6) On or about January 18 and January 20–21, 1998, William Jefferson Clinton related a false and misleading account of events relevant to a Federal civil rights action brought against him to a potential witness in that proceeding, in order to corruptly influence the testimony of that witness.

(7) On or about January 21, 23, and 26, 1998, William Jefferson Clinton made false and misleading statements to potential witnesses in a Federal grand jury proceeding in order to corruptly influence the testimony of those witnesses. The false and misleading statements made by William Jefferson Clinton were repeated by the witnesses to the grand jury, causing the grand jury to receive false and misleading information.

In all of this, William Jefferson Clinton has undermined the integrity of his office, has brought disrepute on the Presidency, has betrayed his trust as President, and has acted in a manner subversive of the rule of law and justice, to the manifest injury of the people of the United States.

Wherefore, William Jefferson Clinton, by such conduct, warrants impeachment and trial, and removal from office and disqualification to hold and enjoy any office of honor, trust, or profit under the United States.

VOTE ON ARTICLE II

The CHIEF JUSTICE. The question is on the second article of impeachment. Senators, how say you? Is the respondent, William Jefferson Clinton, guilty or not guilty?

The clerk will call the roll.

The bill clerk called the roll.

Mr. SPECTER (When his name was called). Not proven, therefore, not guilty.

The result was announced—guilty 50, not guilty 50, as follows:

[Rollcall Vote No. 18]

[Subject: Article II—Articles of Impeachment against President William Jefferson Clinton]

GUILTY—50

Abraham
Allard
Ashcroft
Bennett
Bond
Brownback
Bunning
Burns
Campbell
Cochran
Coverdell
Craig
Crapo
DeWine
Domenici
Enzi
Fitzgerald
Frist
Gorton
Gramm
Grams
Grassley
Gregg
Hagel
Hatch
Helms
Hutchinson
Hutchison
Inhofe
Kyl
Lott
Lugar
Mack
McCain
McConnell
Murkowski
Nickles
Roberts
Roth
Santorum
Sessions
Shelby
Smith (NH)
Smith (OR)
Stevens
Thomas
Thompson
Thurmond
Voinovich
Warner

NOT GUILTY—50

Akaka
Baucus
Bayh
Biden
Bingaman
Boxer
Breaux
Bryan
Byrd
Chafee
Cleland
Collins
Conrad
Daschle
Dodd
Dorgan
Durbin
Edwards
Feingold
Feinstein
Graham
Harkin
Hollings
Inouye
Jeffords
Johnson
Kennedy
Kerrey
Kerry
Kohl
Landrieu
Lautenberg
Leahy
Levin
Lieberman
Lincoln
Mikulski
Moynihan
Murray
Reed
Reid
Robb
Rockefeller
Sarbanes
Schumer
Snowe
Specter
Torricelli
Wellstone
Wyden

The CHIEF JUSTICE. The galleries will be in order.

On this article of impeachment, 50 Senators having pronounced William Jefferson Clinton, President of the United States, guilty as charged, 50 Senators having pronounced him not guilty, two-thirds of the Senators present not having pronounced him guilty, the Senate adjudges that the respondent, William Jefferson Clinton, Presi-

dent of the United States, is not guilty as charged in the second article of impeachment.

The Chair directs judgment to be entered in accordance with the judgment of the Senate as follows:

The Senate, having tried William Jefferson Clinton, President of the United States, upon two articles of impeachment exhibited against him by the House of Representatives, and two-thirds of the Senators present not having found him guilty of the charges contained therein: it is, therefore, ordered and adjudged that the said William Jefferson Clinton be, and he is hereby, acquitted of the charges in the said articles.

The Chair recognizes the majority leader.

COMMUNICATION TO THE SECRETARY OF STATE AND TO THE HOUSE OF REPRESENTATIVES

Mr. LOTT. Mr. Chief Justice, there is an order at the desk.

The CHIEF JUSTICE. The clerk will read the order.

The legislative clerk read as follows:

Ordered, that the Secretary be directed to communicate to the Secretary of State, as provided by Rule XXIII of the Rules of Procedure and Practice in the Senate when sitting on impeachment trials, and also to the House of Representatives, the judgment of the Senate in the case of William Jefferson Clinton, and transmit a certified copy of the judgment to each.

The CHIEF JUSTICE. Without objection, the order will be entered.

STATEMENT BY THE CHIEF JUSTICE OF THE UNITED STATES ON THE SENATE TRIAL

The CHIEF JUSTICE. The Chair wishes to make a brief statement, without objection, I trust.

[Laughter.]

More than a month ago, I first came to preside over the Senate sitting as the Court of Impeachment. I was a stranger to the great majority of you. I underwent the sort of culture shock that naturally occurs when one moves from the very structured environment of the Supreme Court to what I shall call, for want of a better phrase, the more free-form environment of the Senate. [Laughter.]

I leave you now a wiser but not a sadder man. I have been impressed by the manner in which the majority leader and the minority leader have agreed on procedural rules in spite of the differences that separate their two parties on matters of substance.

I have been impressed by the quality of the debate in closed session on the entire question of impeachment as provided for under the Constitution. Agreed-upon procedures for airing substantive divisions must be the hallmark of any great deliberative body.

Our work as a Court of Impeachment is now done. I leave you with the hope that our several paths may cross again under happier circumstances.

The majority leader.

Mr. LOTT. Mr. Chief Justice, we thank you for your comments.

EXPRESSION OF GRATITUDE TO THE CHIEF JUSTICE OF THE UNITED STATES

Mr. LOTT. I send a resolution to the desk.

The CHIEF JUSTICE. The clerk will read the resolution.

The legislative clerk read as follows:

A resolution (S. Res. 37) to express gratitude for the service of the Chief Justice of the United States as Presiding Officer during the impeachment trial.

Mr. LOTT. Mr. Chief Justice, I ask unanimous consent the Senate proceed to the immediate consideration of S. Res. 37 introduced earlier today by Senator LOTT and Senator DASCHLE.

The CHIEF JUSTICE. Without objection, it is so ordered.

Mr. LOTT. Mr. Chief Justice, I ask unanimous consent that the resolution be agreed to, the motion to reconsider be laid upon the table, and any statements that Senators wish to make on this resolution be printed at this point in the RECORD.

The CHIEF JUSTICE. Without objection, it is so ordered.

The resolution (S. Res. 37) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 37

Whereas Article I, section 3, clause 6 of the Constitution of the United States provides that, when the President of the United States is tried on articles of impeachment, the Chief Justice of the United States shall preside over the Senate;

Whereas, pursuant to Rule IV of the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials, on January 6, 1999, the Senate notified William H. Rehnquist, Chief Justice of the United States, of the time and place fixed for consideration of the articles of impeachment against William Jefferson Clinton, President of the United States, and requested him to attend;

Whereas, in the intervening days since January 7, 1999, Chief Justice Rehnquist has presided over the Senate, when sitting on the trial of the articles of impeachment, for long hours over many days;

Whereas Chief Justice Rehnquist, in presiding over the Senate, has exhibited extraordinary qualities of fairness, patience, equanimity, and wisdom;

Whereas, by his manner of presiding over the Senate, Chief Justice Rehnquist has contributed greatly to the Senate's conduct of fair, impartial, and dignified proceedings in the trial of the articles of impeachment;

Whereas the Senate and the Nation are indebted to Chief Justice Rehnquist for his distinguished and valued service in fulfilling his constitutional duty to preside over the Senate in the trial of the articles of impeachment: Now, therefore, be it

Resolved, That the Senate expresses its profound gratitude to William H. Rehnquist, Chief Justice of the United States, for his distinguished service in presiding over the Senate, while sitting on the trial of the articles of impeachment against William Jefferson Clinton, President of the United States.

SEC. 2. The Secretary shall notify the Chief Justice of the United States of this resolution.

Mr. LOTT. Mr. Chief Justice, on behalf of myself and the entire U.S. Senate, we offer you our thanks and the gratitude of the American people for your service to the Nation and to this institution throughout this Impeachment Court.

As our Presiding Officer during most of the last 5 weeks, you have brought to our proceedings a gentle dignity and an unfailing sense of purpose and sometimes a sense of humor.

The majority leader realized when it was time to take a break and not to take a break when the Chief Justice said let's go forward.

By placing duty above personal convenience and many other considerations, you have taught a lesson in leadership. Your presence in the chair of the President of the Senate, following the directives of our Constitution, gave comity to this Chamber and assurance to the Nation. I would like to close with our traditional Mississippi parting: Y'all come back soon—I hope that is not taken the wrong way—but not for an occasion such as this one.

So instead, as you return to your work on the Court in the great marble temple of the law right across the lawn from this Capitol, we salute you, sir, with renewed appreciation and esteem for a good friend and good neighbor.

PRESENTATION OF THE GOLDEN GAVEL AWARD

Now, Mr. Chief Justice, if the Democratic leader will join me, we have a small token of our appreciation. We have a tradition in the Senate that after you have presided over the Senate for 100 hours, we present you with the Golden Gavel Award. I am not sure it quite reached 100 hours, but it is close enough.

The CHIEF JUSTICE. It seemed like it.

[Applause, Senators rising.]

Mrs. HUTCHISON. Mr. President, I wish to add my thanks to the Chief Justice for his untiring efforts throughout the impeachment trial and to commend him for his dignity, fairness, and humor.

Mr. KYL. I add my expression of appreciation to the Chief Justice and the officers of the court who had a role in this proceeding—the House managers, the counsel for the White House, and Independent Counsel Kenneth Starr—for their honorable service.

UNANIMOUS CONSENT AGREEMENT

Mr. LOTT. Mr. Chief Justice, I ask unanimous consent that the February 5, 1999, affidavit of Mr. Christopher Hitchens; the February 7, 1999, affidavit of Ms. Carol Blue; and the affidavit of Mr. R. Scott Armstrong be admitted into evidence in this proceeding and the full written transcripts of the depositions taken pursuant to S. Res. 30 be included in the public record of the trial. This matter has been cleared on both sides of the aisle.

The CHIEF JUSTICE. Without objection, it is so ordered.

ADJOURNMENT SINE DIE OF THE COURT OF IMPEACHMENT

Mr. LOTT. Now, Mr. Chief Justice, I move that the Senate, sitting as a Court of Impeachment on the articles exhibited against William Jefferson Clinton, adjourn sine die.

The motion was agreed to and, at 12:43 p.m., the Senate, sitting as a Court of Impeachment, adjourned sine die.

ESCORTING OF THE CHIEF JUSTICE

Mr. LOTT. The committee will go to the podium to escort the Chief Justice from the Chamber.

Whereupon, the Committee of Escort: Mr. THURMOND, Mr. ROTH, Mr. DOMENICI, Mr. SARBANES, Mr. MOYNIHAN, and Mrs. LINCOLN, escorted the Chief Justice from the Chamber.

The PRESIDING OFFICER (Mr. ENZI). The Sergeant at Arms will escort the House managers out of the Senate Chamber.

Whereupon, the Sergeant at Arms escorted the House managers from the Chamber.

Mr. LOTT addressed the Chair.

The PRESIDING OFFICER. The Senate will please come to order. The majority leader.

Mr. LOTT. Mr. President—I almost called you Mr. Chief Justice; I have to get used to going back to "Mr. President"—before Senator FEINSTEIN is recognized, I must take just a moment further to recognize a few individuals, and I know Senator DASCHLE would like to do that. In addition to the Chief Justice and his assistants who were here throughout——

Mrs. HUTCHISON. Mr. President, I believe the White House attorneys should have the same privilege of being escorted out.

Mr. LOTT. I think we will ask Senator NICKLES to handle that. [Laughter.]

The PRESIDING OFFICER. The White House counsel will be escorted from the Chamber.

Whereupon, White House counsel were escorted from the Chamber.

THANKING SENATE STAFF

Mr. LOTT. Mr. President, if I could resume, I thank the assistants who came with the Chief Justice from the Supreme Court. I thank the Secretary of the Senate, Gary Sisco; the Sergeant at Arms, Jim Ziglar; and the Deputy Sergeant at Arms, Loretta Symms, who also gave us our instructions—the first time in history, I am sure, that a woman called the Senate to order.

I would like to thank the secretary of the majority, Elizabeth Letchworth; counsel of the Senate, Tom Griffith, and deputy Morgan Frankel, our special impeachment counsel, Mike Wallace; my chief of staff, Dave Hoppe—who has just been tremendous and worked untold hours—and also all of our assistants at the desk—and especially our friend Scott Bates—for their wonderful work. I want the RECORD to reflect how much we appreciate the dedication and the long hours, the patience, and the competence of all these staff members.

I would like to yield to Senator DASCHLE for his comments in this area.

The PRESIDING OFFICER. The Democratic leader.

Mr. DASCHLE. Mr. President, I know I speak for all of my colleagues on this side of the aisle, sharing the expressions of gratitude that Senator LOTT has just articulated for all of our staff. They have done a remarkable job. He mentioned all those who work for all of us. Let me mention a couple of people who work for

those of us on this side: Bob Bauer, Bill Corr, Pete Rouse, Marty Paone, and so many people who were particularly responsible for the fact that we were able to conduct our work so effectively throughout this very difficult challenge.

So on behalf of the Democratic Caucus, we join with Senator LOTT in expressing our deep sense of gratitude for the great, great job that they have done in these difficult weeks that we have now concluded.

I yield the floor.

Mr. CHAFEE addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Rhode Island.

APPRECIATION TO THE LEADERSHIP

Mr. CHAFEE. I wonder if this isn't an appropriate time to express our appreciation to our two leaders for guiding us through these very difficult times.

[Applause, Senators rising.]

The PRESIDING OFFICER. The Chair recognizes the Senator from California.

RESOLUTION OF CENSURE

Mrs. FEINSTEIN. Mr. President, I move to proceed to my censure resolution which is at the desk.

The text of the motion reads as follows:

I move to suspend the following:

Rule VII, paragraph 2 the phrase "upon the calendar", and;

Rule VIII, paragraph 2 the phrase "during the first two hours of a new legislative day".

In order to permit a motion to proceed to a censure resolution, to be introduced on the day of the motion to proceed, notwithstanding the fact that it is not on the calendar of business.

Mr. GRAMM addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Mr. President, I have to object. This resolution is not on the Calendar. Therefore, it is not in order to present it to the Senate.

Mrs. FEINSTEIN addressed the Chair.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Mr. President, in light of that objection, I move to suspend the rules, the notice of which I printed in the RECORD on Monday, February 8, in order to permit my motion to proceed.

Mr. GRAMM addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Mr. President, I send a motion to the desk, a motion to indefinitely postpone the consideration of the Feinstein motion.

The PRESIDING OFFICER. The clerk will report the motion.

Mr. GRAMM. Mr. President, I ask that reading of the motion be dispensed with, and I ask for the yeas and nays.

The PRESIDING OFFICER. Without objection, it is so ordered.

Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Texas, Mr. GRAMM. The yeas and nays have been ordered. The clerk will call the roll.

The yeas and nays resulted—yeas 43, nays 56, as follows:

[Rollcall Vote No. 19 Leg.]

YEAS—43

Allard
Ashcroft
Bond
Brownback
Bunning
Burns
Byrd
Campbell
Cochran
Coverdell
Craig
Crapo
DeWine
Enzi
Fitzgerald
Frist
Gramm
Grams
Grassley
Gregg
Hagel
Hatch
Helms
Hutchinson
Inhofe
Kyl
Lott
Mack
McCain
Murkowski
Nickles
Roberts
Santorum
Sessions
Shelby
Smith Bob
Specter
Stevens
Thomas
Thompson
Thurmond
Voinovich
Warner

NAYS—56

Abraham
Akaka
Baucus
Bayh
Bennett
Biden
Bingaman
Boxer
Breaux
Bryan
Chafee
Cleland
Collins
Conrad
Daschle
Dodd
Dorgan
Durbin
Edwards
Feingold
Feinstein
Gorton
Graham
Harkin
Hollings
Hutchison
Inouye
Jeffords
Johnson
Kennedy
Kerrey
Kerry
Kohl
Landrieu
Lautenberg
Leahy
Levin
Lieberman
Lincoln
Lugar
McConnell
Mikulski
Moynihan
Murray
Reed
Reid
Robb
Rockefeller
Roth
Sarbanes
Schumer
Smith Gordon H
Snowe
Torricelli
Wellstone
Wyden

NOT VOTING—1

Domenici

The PRESIDING OFFICER (Mr. INHOFE). On this vote, the yeas are 43, the nays are 56. Two-thirds of the Senators not having voted in the negative, the motion to suspend is withdrawn and the Gramm point of order is sustained. The Feinstein motion to proceed falls.

CENSURE RESOLUTION OF PRESIDENT WILLIAM JEFFERSON CLINTON

Mrs. FEINSTEIN. Mr. President, I just want to point out to everyone who is interested that a censure resolution has been entered at the desk. It has 38 cosponsors.

During these trying days, the question has been asked of many of us: "What will we tell our children about this sordid period in our Nation's history?"

Members of the Senate, I had hoped to be able to tell my granddaughter and, indeed, the rest of our Nation, that the U.S. Senate had come together in bipartisan fellowship to approve a censure resolution that would deliver a clear message that the behavior of President William Jefferson Clinton has been inappropriate, intolerable, and unacceptable.

Unfortunately, some in this body have forestalled our ability to bring such a resolution to the floor of the Senate for a vote. This I regret deeply.

There are moments in history when we are able to rise up against the forces driving us apart and come together with a united purpose. I believe that the censure resolution provided us with just such an opportunity.

While not a cure-all, the resolution is a way to share with our children and the rest of our nation our findings, our sentiments, our belief that the actions of the President are a violation of the trust of the American people and have brought shame and dishonor upon the Presidency and the man.

But as has been made clear, those of us who truly believe a strong censure is the appropriate resolution in this case are being prevented from bringing it to the floor of this Senate for a vote.

The main co-sponsor is the Senator from Utah, Mr. ROBERT BENNETT. In all, it is co-sponsored by 36 Senators—over one-third of this Senate.

The words of the resolution were strong, but they are fitting words and I believe a bipartisan majority of the Senate would be prepared to vote for this censure resolution if it were permitted to come to a vote today.

Over the past few weeks, I have worked very closely with a large number of Senators to develop a bipartisan resolution, largely because I felt it so important that anyone who looks at this shabby episode of American history understands that while one may not vote to convict and remove a President, one can have profound dismay and concern about the misconduct that was inherent in the articles of impeachment.

That is why I regret deeply that some have seen fit to prevent us from voting on a censure resolution.

Because that cannot happen today, I have joined with the cosponsors of this resolution to formally present it to the Senate and record it in the CONGRESSIONAL RECORD, making clear for all time the strong censure of this President and condemnation of his actions by at least one-third of the U.S. Senate.

Earlier today, I voted against conviction and removal of the President on both articles of impeachment. I did not believe the

House managers established beyond a reasonable doubt that this President is guilty of perjury and obstruction of justice.

Although I deplore the circumstances that have brought us to this point, I do not believe they present a clear and present danger to the functioning of our government, and therefore this President, who has been a good President for the people of the United States, should not be convicted and removed from office.

However, I feel very strongly and sincerely that the acquittal of the President on the articles of impeachment should not be the Senate's last word on the President's conduct, and that without further action such as a resolution of censure, the wrong message about the President's actions and the Senate's views thereon will be sent to the country.

One of the most worthwhile experiences of my Senate career has been listening to the remarks of the Senators over the past three days on the floor of the U.S. Senate. Each one gave substantial deliberation, serious thought and research, and tried his or her level best to maintain their oath of impartiality.

It should be clear that this was not an easy time. It should be clear that everyone in the Senate at every minute of every day wished this were not happening. But we found ourselves caught up in a constitutional requirement that gave us little choice.

I hope we come out of this with a deeper understanding of the divisions and polarization which all of this has caused, and that every effort can be made, not only by our leadership but by every Member of the Senate in every issue that comes before us to seek out a bipartisanship and to work together to solve the problems facing our Nation.

A good start in this process would have been to have allowed a vote on the censure resolution. I hope that when we return from the President's Day recess, we will do better.

I want to clear up once and for all the intent behind our censure resolution.

The resolution does not express legal conclusions in the court of impeachment. Rather, it is a legislative measure, expressing our conclusions regarding the President's conduct.

The legal conclusions to be made in this case, if any, will be left to a court of law. Our intent is not to bind or influence the court one way or another, for good or ill, in making any determinations which it may about the President's conduct.

Instead, our purpose is to speak to the moral ramifications of the President's conduct and to the message that those actions send to the people of our nation, especially its youth.

While the President's actions do not constitute a fundamental threat to the nation, neither were they at all acceptable. The President's conduct was both willful and wrong; clearly, by any standard, his behavior is indefensible.

These actions demeaned the Office of the President, violated the trust of the American people, and brought shame and dishonor upon President Clinton.

Let me speak for a moment about the process which we have gone through in developing the language. I began the process when I started to doubt whether the President's conduct rose to the level

of a high crime or misdemeanor for which he should be removed from office.

Senator HERB KOHL was an early partner in this effort, and he and his staff provided valuable input.

As we developed the language further, I sounded out more of my colleagues, on both sides of the aisle, on the issue. I was fortunate enough to have Senator BENNETT join me as the lead Republican co-sponsor. Senator BENNETT has been a stalwart partner in this effort, and it has been a real pleasure working with him.

Many senators offered input regarding the specific language of the resolution, and we have incorporated virtually every suggestion made.

Senators LINCOLN, SNOWE, LEVIN, JEFFORDS, and SCHUMER, for instance, all have left their imprint upon this text, as has Senator MOYNIHAN, who was appointed by Senator DASCHLE to join Senator KOHL and myself as a Democratic task force on censure.

In the process of developing this language and striving for a bipartisanship, we have gone through some 25 drafts of the resolution. We believe that the text before you today is that which can obtain the most support from the most senators, of both parties.

As a result of these efforts, I am very pleased that we have been joined by a very significant number of co-sponsors from both sides of the aisle. These co-sponsors run the ideological gamut from liberal to moderate to conservative. The breadth of these co-sponsors, I believe, represents the widespread consensus that the President's actions merit serious condemnation.

Let me now discuss the ample historical precedents for this censure resolution.

Censure is an extraordinary measure that Congress has used sparingly over the past 200 years.

Censure is rare because it is such a powerful expression of Congressional criticism. In a censure resolution, a House of Congress publicly states its collective view that an individual has acted beyond the bounds of acceptable professional conduct. A censure records for history the major misdoings of public men and women.

Over the past 200 years, the House and Senate have initiated censure proceedings against Executive Branch officials on at least 13 different occasions.

Three times a House of Congress has adopted measures that could be described as a censure of a President. In 1834, the Senate censured President Andrew Jackson. Twice the House has adopted statements criticizing presidents—in the cases of John Tyler and James Buchanan.

Censuring President Clinton would be consistent with historical use of this rare, but powerful, Congressional power.

By far the most famous censure case of a sitting President involved Andrew Jackson.

President Jackson feuded with Congress over the establishment of a Bank of the United States.

First, in 1832, he vetoed the rechartering of the Bank of the United States on the grounds that it was unconstitutional, elitist, and had failed in establishing a sound currency.

Second, Jackson directed the government to withdraw its funds from the Bank. When his Treasury Secretary protested the withdrawal, Jackson removed him from his position.

On March 28, 1834, the Senate voted to censure President Jackson by a partisan vote of 26–20.

The resolution stated:

Resolved, That the President, in the last executive proceedings in relation to the public revenue, has assumed upon himself authority and power not conferred by the Constitution and laws, but in derogation of both.

The censure resolution expressed more than idle words. It dealt Jackson a painful blow in the arena of public opinion and in history.

Soon after the vote, Jackson wrote to the Senate challenging its action. He noted that the Senate resolution was "an imputation upon my private as well as public character."

This censure was such a powerful condemnation of President Jackson's actions that his supporters led the Senate to revisit the issue several years later. On January 14, 1837, the Senate voted to expunge the censure resolution from the record by a vote of 24–19.

The House of Representatives has adopted two other statements that can be construed as censure motions against a President.

In 1841, John Tyler assumed the Presidency upon the death of President William Henry Harrison. In contrast to President Harrison, whose Whig views coincided with views of the majority of Congress, Tyler espoused States rights.

Tyler aroused the anger of Congress by vetoing Whig-sponsored bills related to tariffs and the creation of a national bank. Exasperated members of the House of Representatives finally decided to publicly rebuke the President.

A select committee drafted a report criticizing the President for:

"Gross abuse of constitutional power and bold assumptions of powers never vested in him by any law"; for having "assumed the whole Legislative power to himself, and levying millions of money upon the people, without any authority of law"; and for the "abusive exercise of the constitutional power of the President to arrest the action of Congress upon measures vital to the welfare of the people."

On August 17, 1842, the House passed this select Committee report.

Along with his Secretary of the Navy, President Buchanan was implicated in a financial scandal. There were accusations of "kickbacks" and the granting of government contracts to political supporters.

On June 13, 1860 the House of Representatives voted 106–61 in favor of "censuring" the Secretary of the Navy and stating that President Buchanan's conduct deserved its "reproof."

The resolution stated:

Resolved, That the President and the Secretary of the Navy, by receiving and considering the party relations of bidders for contracts and the effect of awarding contracts upon pending elections, have set an example dangerous to the public safety, and deserving the reproof of this House.

Other executive officials: At least three secretaries of cabinet departments and one ambassador have also been censured.

These cases include:

(1) Secretary of the Navy Isaac Toucey, 1860—On June 13, 1860, the House of Representatives passed a resolution censuring Secretary Toucey in the same "kickback" and bribery scandal that led to the "reproof" of President Buchanan.

(2) Secretary of War Simon Cameron, 1862—In another corruption scandal, the House passed a censure resolution against Secretary of War Cameron for embezzlement and for entrusting public money to his lieutenant, Alexander Cummings. Mr. Cummings allegedly spent $21,000 of government funds on personal items like straw hats, linen pantaloons, scotch ale, and herring.

(3) Attorney General, A.H. Garland, 1886—On March 24, 1886, the Senate passed a resolution of "condemnation" of the Attorney General for refusing to turn over government papers regarding the removal of a District Attorney from Office.

(4) Ambassador Thomas Bayard, 1896—On March 20, 1896 the House of Representatives considered a resolution condemning and censuring Ambassador Bayard for diplomatic improprieties. He was charged with making partisan remarks to British audiences.

Congress has also used censure to condemn the conduct of its own Members. Nine Senators and 22 Members of the House have been censured.

Indeed, many Members of this body personally know former Senators who have been censured. To those who argue that censure is "a wet noodle across the wrist," I would respectfully request that they ask their colleagues how these former Senators felt about being censured. I am confident, because I have had some of these conversations myself, that they would find that censure was felt deeply and was a very significant stain upon their reputations and legacy.

In sum, censure is a powerful tool used very sparingly by Congress to condemn unacceptable conduct. Congress has initiated censure proceedings in policy disputes, but it has also criticized executive branch officials in the case of President Buchanan, Navy Secretary Welles, and President Nixon for personal misconduct.

So to those who argue that passing this censure would establish a precedent for the future where Presidents and cabinet officials could be censured, I hope this discussion has made it clear: that precedent has already been set.

In this bipartisan censure, we provided the Senate with a real opportunity to achieve a strong, unifying, bipartisan conclusion to this whole tawdry, exhausting, and divisive controversy.

The House's actions were marred with partisanship. Indeed, one example of this was the action of the House leadership to prevent a censure resolution from even being considered on the House floor.

The Senate started its proceedings on a high note, when we came together to agree unanimously, across party lines, upon procedures for the trial. Passing our censure resolution by a strong, bipartisan vote would represent an appropriate "bookend" to this bipartisan beginning and would stand this Senate well in the annals of history.

Moreover, it would put the proper historical perspective upon the Senate's actions and determinations, which should not be read as a vindication of the President.

I believe that passing this censure on a bipartisan basis would bring a real closure to the process, and would help to heal the divisions between the parties which were created during these proceedings, so that we can move on to work together to address the real problems confronting the American people, such as saving social security, improving education, and continuing the fight to reduce crime.

It is time that we move on to these other matters of significance to our people, to reconcile differences between and within the branches of government, and to work together—across party lines—for the benefit of the American people.

I ask unanimous consent that a list of cosponsors and the text of the resolution be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

COSPONSORS

Mrs. Feinstein, Mr. Bennett, Mr. Moynihan, Mr. Chafee, Mr. Kohl, Mr. Jeffords, Mr. Lieberman, Mr. Smith of Oregon, Mr. Daschle, Ms. Snowe, Mr. Reid, Mr. Gorton, Mr. Bryan, Mr. McConnell, Mr. Cleland, Mr. Domenici, Mr. Torricelli, Mr. Campbell, Mr. Wyden, Mrs. Lincoln, Mr. Kerry, Mr. Kerrey, Mr. Schumer, Mr. Durbin, Mrs. Murray, Mr. Wellstone, Mr. Breaux, Ms. Mikulski, Mr. Dorgan, Mr. Baucus, Mr. Reed, Ms. Landrieu, Mr. Kennedy, Mr. Levin, Mr. Rockefeller, Mr. Robb, Mr. Inouye, and Mr. Akaka.

RESOLUTION OF CENSURE

Whereas William Jefferson Clinton, President of the United States, engaged in an inappropriate relationship with a subordinate employee in the White House, which was shameful, reckless and indefensible;

Whereas William Jefferson Clinton, President of the United States, deliberately misled and deceived the American people, and people in all branches of the United States government;

Whereas William Jefferson Clinton, President of the United States, gave false or misleading testimony and his actions have had the effect of impeding discovery of evidence in judicial proceedings;

Whereas William Jefferson Clinton's conduct in this matter is unacceptable for a President of the United States, does demean the Office of the President as well as the President himself, and creates disrespect for the laws of the land;

Whereas President Clinton fully deserves censure for engaging in such behavior;

Whereas future generations of Americans must know that such behavior is not only unacceptable but also bears grave consequences, including loss of integrity, trust and respect;

Whereas William Jefferson Clinton remains subject to criminal actions in a court of law like any other citizen;

Whereas William Jefferson Clinton's conduct in this matter has brought shame and dishonor to himself and to the Office of the President; and

Whereas William Jefferson Clinton through his conduct in this matter has violated the trust of the American people: Now therefore, be it

Resolved, That the United States Senate does hereby censure William Jefferson Clinton, President of the United States, and does condemn his wrongful conduct in the strongest terms; and now be it

Further resolved, That the United States Senate recognizes the historic gravity of this bipartisan resolution, and trusts and urges that future congresses will recognize

the importance of allowing this bipartisan statement of censure and condemnation to remain intact for all time; and be it

Further resolved, That the Senate now move on to other matters of significance to our people, to reconcile differences between and within the branches of government, and to work together—across party lines—for the benefit of the American people.

CENSURE

Ms. SNOWE. Mr. President, now that we have come to the end of the process required by the Constitution, I believe we have arrived at an appropriate time to consider a measure required by the President's conduct.

I rise in support of censure because while I do not find that the President's behavior constitutes high crimes and misdemeanors requiring removal, I do believe that it compels us to record for history our recognition of the damage we all acknowledge he has inflicted upon the Office of the Presidency and the Nation.

Acquittal must not be the last word. And while I have felt that it would have been more appropriate for the Senate to issue findings of fact in the impeachment case against the President, I am now prepared to support censure so that there is no mixed message for posterity about what the Senate thinks of the President's actions.

As I said yesterday, the President's behavior is indefensible, and I for one have no interest in seeing another shameless "Rose Garden Jubilee" after today's vote by the Court of Impeachment. Acquittal is not exoneration. Nothing we do here today in any way absolves the President's responsibility for the harm he has inflicted—and the President must know this.

Indeed, this has been a sordid chapter in the history of the Presidency, and it deserves to be closed with a stern warning and a strongly worded rebuke that will leave no doubt to future generations that this process was not simply much ado about nothing; it was, in fact, about something very important—the sanctity of public service.

That's why I worked with Senators FEINSTEIN and BENNETT to include language expressing the will of this Senate that this resolution not be revoked by a future Congress. I also want to thank them for their willingness to include language that makes clear the Senate believes the President should be treated as any other citizen facing criminal allegations once he leaves office in 23 months.

The fact is, even while this body has acquitted the President on articles of impeachment, the framers provided for an additional remedy for his conduct in standard criminal court. Why? Because they had known a country where some men were above the law and some below. They were determined to create a Nation where the level of justice served was not proportional to a person's pocketbook, social rank, or political power.

I believe acquittal, though the proper outcome, by itself could present a skewed picture of the Senate's findings, and runs the risk that the President will claim exoneration for his actions. Such a claim, evidence of which is already apparent, is quite simply and obviously wrong.

The President may not have committed high crimes and misdemeanors, but what he has done—in my mind including unlawfully influencing a potential witness—deserves a formal rebuke by the Senate. Censure would be an appropriate and constitutionally permissible way to do this.

For a President who from the very beginning promised the most ethical administration any of us would ever see, censure would be a well-deserved legacy of a promise broken and a Presidency sullied. I will vote for this censure motion and I urge my colleagues to do likewise.

CENSURE RESOLUTION

Mr. ASHCROFT. Mr. President, the debate we will be having in the Senate is on whether to suspend the rules of the Senate to consider a resolution censuring the President's conduct.

A motion will be made to indefinitely postpone the motion to suspend the rules. These votes will occur before Senators have the opportunity to amend the resolution censuring the President's conduct.

I take the floor of the Senate to make clear that I am opposed to a censure resolution of President Clinton.

The Impeachment Trial of President William Jefferson Clinton is over. The Senate has faithfully discharged its constitutional obligation by serving as impartial jurors of the articles of impeachment approved by a bipartisan majority of the U.S. House of Representatives.

The Senate has rendered its verdict and has found the President not guilty as charged. The consequence of this action by the Senate is to keep the President in office where he is to fully and faithfully discharge the constitutional duties of his office.

The trial is over. It is time for the Senate to focus on the national legislative agenda.

On this last point, I chose my words carefully. I did not say it is time for the Senate to turn to the people's business.

Some have said we should not have had the trial or should have adjourned the trial much earlier so that we could turn to the people's business.

I reject that notion. I firmly believe that conducting the trial was doing the people's business.

But the truth is the trial is over. I do not see any place for the pending resolution censuring the President. It is not the business of the Senate to punish President Clinton.

As Senator BYRD has concluded, censure, unlike impeachment, is "extra-constitutional." The Constitution empowers the Senate to try a President impeached by the House and remove him if 67 Senators agree. The Constitution does not empower the Senate to punish a President in the absence of 67 votes to remove.

The impeachment trial is over. The Senate should move on and leave President Clinton alone.

The Constitution recognizes that if a President cannot be removed through impeachment, he should not be weakened by censure. Although the Senate passes sense of the Senate resolutions

on many subjects, censure is different because the Constitution requires a two-thirds vote before the Senate can discipline the President and requires removal upon conviction for impeachable offenses. Censure is an effort to end-run these constitutional requirements.

One final problem is that any censure resolution will have to be weak. Even proponents of censure concede that a censure resolution that actually punished the President would be an unconstitutional bill of attainder. Any censure that is consistent with the bill of attainder clause is too weak to be worth doing.

The highest form of censure the Constitution allows is impeachment by the House. The failure to convict the President will not erase that action by the House. It is time for the Senate to move on.

If the effort to suspend the rules passes, and the text of the censure resolution is before the Senate and is amendable, I will seek recognition to offer the following substitute:

After the word "*Resolved*" strike everything and insert the following:

"That the United States Senate at the earliest opportunity will consider and have final votes on legislation favorably reported by its committees that—

(1) reduces taxes so that Americans no longer pay record high levels of federal income taxes;

(2) prohibits the financial surplus in the Social Security Trust Funds from financing additional deficit spending in the operating budget of the United States Government;

(3) increases funds and flexibility for programs that local school districts and their parents, teachers and principals believe will enhance teaching and learning;

(4) offers comprehensive responses to juvenile justice needs and criminal drug abuse, including increased penalties for adults who use minors in the commission of crimes, increased penalties for drug trafficking, and greater resources for local law enforcement agencies to stop methamphetamine trafficking.

(5) improves military pay to reduce sharp declines in attracting new and keeping well-qualified solders in the all-volunteer Armed Forces."

This substitute resolution speaks for itself. This resolution sets the Senate on the right course for the Senate to accomplish the legislative priorities of this nation.

These priorities include:

Congress this year should direct the budget surplus to where it belongs, and that is to the people whose hard work produced the surplus.

That means Congress should cut taxes. Americans should no longer pay record high levels of federal income taxes.

The average household paid 25 percent of its income in taxes—Federal, State, and local—30 percent of every additional dollar earned by a four-person median income household of $55,000 will go to pay taxes.

The typical American family spends more money on taxes than on food, clothing, and shelter combined. Each year, Americans work 4 months and 10 days just to pay their taxes. The tax burden is getting worse, not better. For the past 5 years, tax payments have grown faster than salaries. Total federal taxes in 1997 were the highest since World War II.

Second, Congress should protect Social Security.

The best action we can take now to protect the economic security of tomorrow's retirees is to protect current surpluses from government raiding.

Using these surpluses to pay down our debt will put our country in the best possible financial position to meet our future obligations.

Third, we should improve education by increasing funds and flexibility for programs that local school districts and their parents, teachers, and principals believe will enhance teaching and learning.

The Department of Education requires over 48.6 million hours worth of paperwork to receive federal dollars. This bureaucratic maze takes up to 35% of every federal education dollar.

Local school districts could find far better uses of the $10–$12 billion Washington spends. With direct funding, local schools could deploy resources to areas they deem most crucial for their students, such as hiring new teachers, raising teacher salaries, buying new textbooks or new computers

Fourth, Congress must fight crime and drug abuse.

While in the last few years the violent crime rate has declined, it remains at levels that are far too high. In 1960, 159 violent crimes per 100,000 inhabitants were reported; in 1997, 611 were reported. In short, violent crime has quadrupled since 1960.

Drug abuse, especially use of methamphetamines, is also at dangerous levels. Public health and law enforcement officials believe that meth is more dangerous and addictive than cocaine and heroin. Communities are being devastated and the problem is growing exponentially. In 1994, DEA agents in Missouri seized 14 clandestine meth labs. Last year, they seized 421 labs.

Meth use is dangerous, threatens our children, and causes users to commit other crimes. Among 12th graders, the use of ice, a smokeable form of meth, has risen 60 percent since 1992. Meth-related emergency room incidents are up 63 percent over this same period.

Fifth, Congress should improve military pay to reduce sharp declines in attracting new and keeping well-qualified soldiers in the all-volunteer Armed Forces.

1999 marks the 14th straight year of decline in real dollars spent on our national defense. The number of active duty personnel is down 30% since 1991. Despite these reductions, the military is being asked to do more than it did during the Cold War.

In writing these principles, I strived for bipartisan agreement. I believe many, if not all, of these principles have been articulated as priorities on both sides of the aisle.

I did not include my own proposals for accomplishing these objectives. The details of these principles can and should be worked out by the committees of the Senate and then by the full Senate.

PRESIDENT CLINTON SHOULD FEEL THE DISDAIN OF THE SENATE

Mr. CHAFEE. Mr. President, the Senate has been held in the grip of the impeachment trial for the past 6 weeks, the House has been involved in the impeachment process for the past 6 months, and the Nation has been divided over the actions and fate of the

President for more than a year. We were not compelled to undertake this nearly unprecedented Constitutional remedy by partisanship, as some at the White House have suggested. We were driven to this point by Bill Clinton and Bill Clinton alone.

Although I voted to acquit the President on the charges, I have no doubt that if I served in the House, I would have voted to impeach him.

Chairman HYDE offered the White House every opportunity to defend the President, but the White House chose a different course. They chose to belittle the charges against the President by suggesting that everyone lies about sex. They chose to accuse their accusers by attacking the motives and integrity of the Judiciary Committee Republicans and by insinuating that Judge Starr is a sex-obsessed prosecutor run amok. They did not question the evidence on which the impeachment vote was based.

With that evidence, the House Managers presented a powerful case against the President. As a result of their presentations, I am convinced that the President acted to circumvent the law. The notion that the President of the United States, the number one citizen of our nation, the man in whom the trust and respect of the country is meant to rest, would deliberately maneuver around the laws of the land is reprehensible and should be condemned.

Alexander Hamilton, in "The Federalist Papers" No. 65, said:

> The delicacy and magnitude of a trust, which so deeply concerns the political reputation and resistance of every man engaged in the administration of public affairs, speak for themselves.

President Clinton betrayed that delicate trust. The House Managers tried to restore it. In the end, the witnesses, all of whom were sympathetic to or allies of the President, provided direct evidence that failed to corroborate the House Managers' case. Removing the President from office in the face of a conflict between direct and circumstantial evidence, in my view, would be mistaken. On that basis, I voted to acquit the President. Nevertheless, the House Managers and all of the evidence left me convinced that the President acted in a way that is abominable. By voting for the censure resolution proposed by Senator FEINSTEIN, the Senate makes clear that it does not exonerate the President.

CENSURE

Mr. KOHL. Mr. President, during the impeachment trial, it was the duty of the Senate to look at the facts, look at the law, look at the Constitution, and make a judgment. We did our duty.

But now we need to go one step further because neither acquittal nor conviction is an entirely adequate conclusion to this sordid matter. We must speak our contempt and disappointment for the low behavior of our highest elected official.

We need to speak for the spirit behind our laws, behind this institution, behind the country. We need to say that the President's actions and lies were wrong—"shameful, reckless and indefensible." We need to acknowledge that his conduct, unacceptable for any American, is especially so for the President of the United States because it "creates disrespect for the laws of the land."

I am proud that all 100 Senators worked together through this ordeal to do our duty. I am proud that so many of us from both sides of the aisle worked together to craft this tough censure resolution.

But I am sorry that a small minority will keep us from also doing what is honorable and what is right. We need to officially express our collective disdain for the President's conduct. It's the only truly appropriate, bipartisan way to bring closure to this melancholy moment in American history.

When Senator FEINSTEIN and I started talking about a censure resolution, as early as last December, I had no certainty that we would come so far and bring so many along. Her perseverance, hard work and legislative craftsmanship deserve our praise but our efforts deserve a clean "up or down" vote.

RESOLUTION OF CENSURE

Mr. HOLLINGS. Mr. President, I ask that a draft of a proposed resolution of censure be printed in the RECORD.

The material follows:

RESOLUTION OF CENSURE

Whereas William Jefferson Clinton, President of the United States, engaged in an in appropriate relationship with a subordinate employee in the White House, which was shameful, reckless and indefensible;

Whereas William Jefferson Clinton, President of the United States, deliberately misled and deceived the American people, and people in all branches of the United States Government.

Whereas William Jefferson Clinton's conduct in this matter is unacceptable for a President of the United States, does demean the Office of the President as well as the President himself, and creates disrespect for the laws of the land;

Whereas President Clinton fully deserves censure for engaging in such behavior;

Whereas future generations of Americans must know that such behavior is not only unacceptable but also bears grave consequences, including loss of integrity, trust and respect;

Whereas William Jefferson Clinton remains subject to criminal actions in a court of law like any other citizen;

Whereas William Jefferson Clinton's conduct in this matter has brought shame and dishonor to himself and to the Office of the President; and

Whereas William Jefferson Clinton through his conduct in this matter has violated the trust of the American people: Now therefore, be it

Resolved, That the United States Senate does hereby censure William Jefferson Clinton, President of the United States, and does condemn his wrongful conduct in the strongest terms; and now be it further

Resolved, That the United States Senate recognizes the historic gravity of this resolution, and trusts and urges that future congresses will recognize the importance of allowing this statement of censure and condemnation to remain intact for all time; and be it further

Resolved, That the Senate now move on to other matters of significance to our people, to reconcile differences between and within the branches of government, and to work together—across party lines—for the benefit of the American people.

A CALL FOR AN END TO THE POLITICAL WARS

Mr. DASCHLE. Mr. President, today's votes on the articles of impeachment mark the end of a long and difficult journey. The story of this impeachment process suggests a number of lessons on which I expect we will all reflect individually and collectively for some time.

From the beginning of this process, I objected in the clearest terms to the President's legal hairsplitting and attempts to find a legal excuse, or any excuse, for his deplorable personal conduct. In my view, the President violated the public trust and brought dishonor to the office he holds. For that, he will have to answer to the people of this country and to history.

But it was every Senator's duty to put personal views aside and render impartial justice, based on constitutional standards and the evidence before the Senate. In my view, the President's conduct did not, under our Constitution, warrant his removal from office. Others, acting on equally sincere motives, reached a different conclusion.

It is regrettable that something about this process led to a situation, particularly in Washington, where sincere voices on both sides were too often drowned out by partisan voices—again, on both sides. But, if we listen to voices outside the Nation's capital, the voices of citizens rather than of partisans, those voices tell us that something has gone terribly wrong in our public discourse.

Those citizens see the impeachment process not as a solemn constitutional event, which it assuredly was, but, rather, as another sad episode in the sorry saga of a bitter, partisan, and negative political process that runs on the fuel of scandal. In this sense, to many Americans, the Starr investigation, and the impeachment process it spawned, were all too familiar.

To much of the American public, this whole process was a long-running, 50-million-dollar negative ad built on personal attacks, the likes of which Americans regret and reject.

I know this belief is shared by thousands of South Dakotans and millions of Americans who hold widely varying views of what the outcome of the impeachment proceeding should have been—conviction or acquittal, removal or continued service by the President to the conclusion of his term.

What are the elements, the component parts, of this political process that so many Americans judge to be merely an ugly spectacle increasingly unworthy of their participation? What is making Americans so cynical that they are voting in record-low numbers and tuning out the government meant to serve them?

Surely they must be concerned about the increased use, and misuse, of the legal process in our political process. They are no longer certain they can distinguish the proper application of the law to address real wrongdoing properly before the courts from the hijacking of the law to bludgeon political opponents and extend the battlefield of political attack.

In just 10 years, we have seen the public careers of three House Speakers, representing both political parties, destroyed by scandal. As the process has escalated, independent counsel have pursued members of Presidents' cabinets—of both parties and then the President of the United States himself.

We have watched what we all acknowledge as "the politics of personal destruction" threaten to devour our democratic ideals.

We can, and we will, argue the merits of the independent counsel statute when it comes up for reauthorization this session. We can, and we will, continue to pursue those who are corrupt, who use

their offices for personal gain, or who otherwise deserve punishment.

But the law must be preserved as an instrument for the rendering of justice, not manipulated to serve as another readily accessible weapon to be used against political adversaries.

The law should not become a substitute for elections. Political choices in this country must remain in the hands of the people of this country, not conveyed to prosecutors and lawyers.

It is not the law's fault that there has been a hardening of position and a commitment to win at any cost. To paraphrase our former colleague Dale Bumpers' now famous declaration in his presentation to the Senate, "Sometimes we want to win too badly."

It is time for elected officials to ask themselves, "Does anyone in this country really feel as though they have been winners in this seemingly interminable process of investigation, media spectacle and impeachment controversy?"

I hope we can keep Senator Bumpers' words in mind and honor each other, with the same degree of commitment that we bring to our disagreements. I hope we can persuade without spinning; that we can argue without shouting; that we can dissent without dividing.

We can be passionate in our beliefs without prosecuting those who believe differently.

There were no winners in this impeachment process, but there were plenty of losers. There are good people who have accumulated thousands of dollars in legal bills as a result of the years of investigating the President. There are good people—on both sides of the aisle—whose private lives will be never be private again. There are people whose reputations have been battered and beaten.

I hope we can keep those people in mind and call for—indeed, insist upon—a truce in the political wars. We need now to think about what we owe ourselves, each other, and the public as we move—and I hope without further delay—to address the true agenda of the American people.

HEALING OF THE NATION

Mr. WARNER. Mr. President, I ask the Senate to indulge me just a few words.

It is a privilege for me to stand in for our distinguished leader, Mr. LOTT. And my remarks also reflect on the outstanding performance not only by Leader LOTT but Leader DASCHLE on this historic day of the Senate. Mr. President, I have just returned, as have most Senators, from responding to many requests by the media on the grounds of the U.S. Capitol. I have said that the verdict is in. It has been given by the Senate. It is now before the Nation and they will be the final jury, the final arbiter. The sovereignty of this country rests not in the high office holders, but it is in the hands of the people. It is for them to decide.

As they approach the decision, I humbly submit to them: Let us put this chapter in our history, tragic though it may be, behind us, and that we heal ourselves and unite and go forward.

This is a great and strong Nation. It is a leader of the world, not only in matters of security for ourselves but security for others, not

only in matters of military security but in matters of economic security. Our President, by his own actions, is a weakened President. That strength which for a while he can no longer give to the Nation must be filled in by the people—individually and collectively. I think we should not spend time dwelling on the past. Leave it to the historians. Let us move forward to the future, heal ourselves, and strengthen our Nation so we can resume as a leader in the world. And may God rest his hand on this Senate and its verdict as being the best for the Nation and for our people.

106TH CONGRESS
1ST SESSION

S. RES. 37

To express gratitude for the service of the Chief Justice of the United States as Presiding Officer during the impeachment trial.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 12, 1999

Mr. LOTT (for himself and Mr. DASCHLE) submitted the following resolution; which was considered and agreed to

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RESOLUTION

To express gratitude for the service of the Chief Justice of the United States as Presiding Officer during the impeachment trial.

Whereas article I, section 3, clause 6 of the Constitution of the United States provide that, when the President of the United States is tried on articles of impeachment, the Chief Justice of the United States shall preside over the Senate;

Whereas, pursuant to rule IV of the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials, on January 6, 1999, the Senate notified William H. Rehnquist, Chief Justice of the United States, of the time and place fixed for consideration of the articles of impeachment against William Jefferson Clinton, President of the United States, and requested him to attend;

Whereas, in the intervening days since January 7, 1999, Chief Justice Rehnquist has presided over the Senate, when sitting on the trial of the articles of impeachment, for long hours over many days;

Whereas Chief Justice Rehnquist, in presiding over the Senate, has exhibited extraordinary qualities of fairness, patience, equanimity, and wisdom;

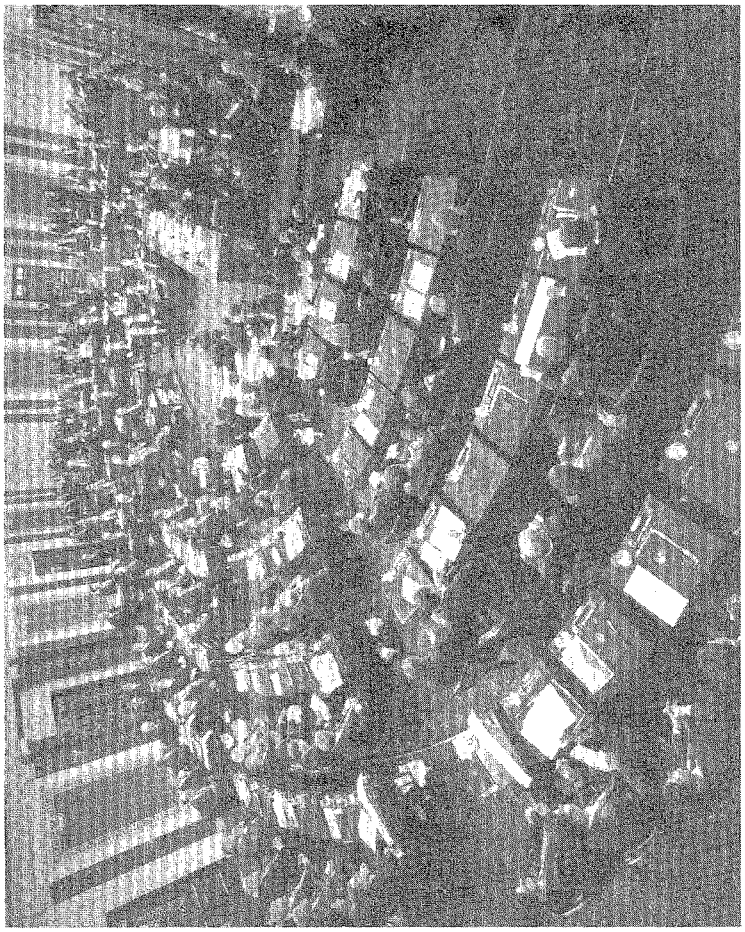
Whereas, by his manner of presiding over the Senate, Chief Justice Rehnquist has contributed greatly to the Senate's conduct of fair, impartial, and dignified proceedings in the trial of the articles of impeachment; and

Whereas the Senate and the Nation are indebted to Chief Justice Rehnquist for his distinguished and valued service in fulfilling his constitutional duty to preside over the Senate in the trial of the articles of impeachment: Now, therefore, be it

1 *Resolved,* That the Senate expresses its profound
2 gratitude to William H. Rehnquist, Chief Justice of the
3 United States, for his distinguished service in presiding
4 over the Senate, while sitting on the trial of the articles
5 of impeachment against William Jefferson Clinton, Presi-
6 dent of the United States.

7 SEC. 2. The Secretary shall notify the Chief Justice
8 of the United States of this resolution.

○



Photograph taken pursuant to S. Res. 36, 106th Cong. (1999)

FEB 1 2 1999
(Date)

Roll Call Vote

IMPEACHMENT [redacted] NO. 17

SUBJECT ARTICLE I
ARTICLES OF IMPEACHMENT
AGAINST PRESIDENT
WILLIAM JEFFERSON CLINTON

GUILTY [redacted]		NOT GUILTY [redacted]
1	Abraham	
	Akaka	1
2	Allard	
3	Ashcroft	
	Baucus	2
	Bayh	3
4	Bennett	
	Biden	4
	Bingaman	5
5	Bond	
	Boxer MRS.	6
	Breaux	7
6	Brownback	
	Bryan	8
7	Bunning	
8	Burns	
	Byrd	9
9	Campbell	
	Chafee	10
	Cleland	11
10	Cochran	
	Collins MS.	12
	Conrad	13
11	Coverdell	
12	Craig	
13	Crapo	
	Daschle	14
14	DeWine	
	Dodd	15
15	Domenici	
	Dorgan	16
	Durbin	17
	Edwards	18
16	Enzi	
	Feingold	19
	Feinstein MRS.	20
17	Fitzgerald	
18	Frist	
	Gorton	21
	Graham, Florida	22
19	Gramm, Texas	
20	Grams, Minnesota	
21	Grassley	
22	Gregg	
23	Hagel	
	Harkin	23
24	Hatch	
25	Helms	
	Hollings	24
26	Hutchinson, Arkansas	
27	Hutchison, Texas MRS.	
28	Inhofe	
	Inouye	25
	Jeffords	26
	Johnson	27
	Kennedy	28
	Kerrey, Nebraska	29
	Kerry, Massachusetts	30
	Kohl	31
29	Kyl	
	Landrieu MS.	32
	Lautenberg	33
	Leahy	34
	Levin	35
	Lieberman	36
	Lincoln MRS.	37
30	Lott	
31	Lugar	
32	Mack	
33	McCain	
34	McConnell	
	Mikulski MS.	38
	Moynihan	39
35	Murkowski	
	Murray MRS.	40
36	Nickles	
	Reed, Rhode Island	41
	Reid, Nevada	42
	Robb	43
37	Roberts	
	Rockefeller	44
38	Roth	
39	Santorum	
	Sarbanes	45
	Schumer	46
40	Sessions	
	Shelby	47
41	Smith, New Hampshire	
42	Smith, Oregon	
	Snowe MS.	48
	Specter	
	Stevens	49
43	Thomas	
	Thompson	50
44	Thurmond	
	Torricelli	51
45	Voinovich	
	Warner	52
	Wellstone	53
	Wyden	54

GPO: 1998 52-278 (mac)

45 55

FEB 1 2 1999
(Date)

Roll Call Vote

IMPEACHMENT [redacted] NO. 18

SUBJECT ARTICLE II
ARTICLES OF IMPEACHMENT
AGAINST PRESIDENT
WILLIAM JEFFERSON CLINTON

GUILTY [redacted]		NOT GUILTY [redacted]
1	Abraham	
	Akaka	1
2	Allard	
3	Ashcroft	
	Baucus	2
	Bayh	3
4	Bennett	
	Biden	4
	Bingaman	5
5	Bond	
	Boxer MRS.	6
	Breaux	7
6	Brownback	
	Bryan	8
7	Bunning	
8	Burns	
	Byrd	9
9	Campbell	
	Chafee	10
	Cleland	11
10	Cochran	
	Collins MS.	12
	Conrad	13
11	Coverdell	
12	Craig	
13	Crapo	
	Daschle	14
14	DeWine	
	Dodd	15
15	Domenici	
	Dorgan	16
	Durbin	17
	Edwards	18
16	Enzi	
	Feingold	19
	Feinstein MRS.	20
17	Fitzgerald	
18	Frist	
19	Gorton	
	Graham, Florida	21
20	Gramm, Texas	
21	Grams, Minnesota	
22	Grassley	
23	Gregg	
24	Hagel	
	Harkin	22
25	Hatch	
26	Helms	
	Hollings	23
27	Hutchinson, Arkansas	
28	Hutchison, Texas MRS.	
29	Inhofe	
	Inouye	24
	Jeffords	25
	Johnson	26
	Kennedy	27
	Kerrey, Nebraska	28
	Kerry, Massachusetts	29
	Kohl	30
30	Kyl	
	Landrieu MS.	31
	Lautenberg	32
	Leahy	33
	Levin	34
	Lieberman	35
	Lincoln MRS.	36
31	Lott	
32	Lugar	
33	Mack	
34	McCain	
35	McConnell	
	Mikulski MS.	37
	Moynihan	38
36	Murkowski	
	Murray MRS.	39
37	Nickles	
	Reed, Rhode Island	40
	Reid, Nevada	41
	Robb	42
38	Roberts	
	Rockefeller	43
39	Roth	
40	Santorum	
	Sarbanes	44
	Schumer	45
41	Sessions	
42	Shelby	
43	Smith, New Hampshire	
44	Smith, Oregon	
	Snowe MS.	46
	Specter	47
45	Stevens	
46	Thomas	
47	Thompson	
48	Thurmond	48
49	Torricelli	
50	Voinovich	
	Warner	49
	Wellstone	50
	Wyden	
50		50

GPO: 1998 52-276 (mas)

In the Senate of the United States,

February 12, 1999.

JUDGMENT

The Senate having tried William Jefferson Clinton, President of the United States, upon two Articles of Impeachment exhibited against him by the House of Representatives, and two-thirds of the Senators present not having found him guilty of the charges contained therein: It is, therefore,

Ordered and adjudged, That the said William Jefferson Clinton be, and he is hereby, acquitted of the charges in said articles.

Attest:

Secretary.

In the Senate of the United States,

February 12, 1999.

Ordered, That the Secretary be directed to communicate to the Secretary of State, as provided by Rule XXIII of the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials, and also to the House of Representatives, the judgment of the Senate in the Case of William Jefferson Clinton, and transmit a certified copy of the judgment to each.

Attest:

Secretary.

GARY SISCO
SECRETARY

SUITE S-220
THE CAPITOL
WASHINGTON, DC 20510-7100
(202) 224-3622

United States Senate
OFFICE OF THE SECRETARY

February 12, 1999

Department of State

Received official notification of the judgment of William Jefferson Clinton, President of the United States.

Madeleine Albright

MADELEINE K. ALBRIGHT,
Secretary of State

Date Received: February 12, 1999